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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 680 OF 2013

Noor Ahmed Mohammed Bagwan

Aged : 39 years, Occ: Services

Residing at Zirapewadi, Phaltan, Dist. Satara.

(Presently lodged at Kolhapur Central Prison,
Kadamba.)

Appellant

.. (Ori. Accused)

Versus

1. The State of Maharashtra.

2. Shaheen Rajjak Bagwan,

R/o. Swami Samarth Mandir,

Near Maltan, Taluka Phaltan,

Dist: Satara, Maharashtra.

.. Respondents

Ms. Dhruti Kapadia, Appointed Advocate for the Appellant.

Mr. S.S. Hulke, APP for the State.

CORAM

: A.S. GADKARI &

MILIND N. JADHAV, JJ.

RESERVED ON

: 28th July 2022.

PRONOUNCED ON

: 19th August 2022.

JUDGMENT (PER : MILIND N. JADHAV, J.)

. This is an Appeal against conviction by the Appellant (accused) challenging the legality of Judgment dated 31.01.2013 passed by the Additional Sessions Judge, Court of Sessions, Satara in Sessions Case No.26 of 2012 convicting the Appellant under Section 302 of the Indian Penal Code (for short “**IPC**”) and sentencing him to suffer life imprisonment and fine of Rs.1,000/-, in default of payment of fine to suffer rigorous imprisonment of six months and to pay compensation of Rs.50,000/- to the mother of the deceased.

2. Appellant – Noor Ahmed Mohammed Bagwan (accused) is nephew of Rajjak Sikandar Bagwan. Deceased Aman is son of Rajjak Sikandar Bagwan and Shaheen Rajjak Bagwan. Rajjak Sikandar Bagwan is the first informant (complainant). Prosecution case is based on circumstantial evidence.

3. Case of the prosecution is as under:-

3.1. Deceased Aman, aged 12 years studied in 7th standard in Premalatatai Chavan High School, village Maltan, Taluka Phaltan. As usual on 28.11.2011 Aman had his meals at about 12:00 noon and left for school. His school timings are from 12 noon to 5:00 p.m. Since he did not return home after 5 p.m., his father Rajjak alongwith some friends went to school to enquire about Aman's whereabouts and learnt that Aman had attended the school on that day. The family waited for some while and thereafter launched a search for Aman, unsuccessfully until midnight. At about 1:00 a.m. in the intervening night between 28.11.2011 and 29.11.2011, a police jeep alongwith police personnel visited Rajjak's house and took him to the house of Appellant in Zirape Galli, Mangalwar Peth, Phaltan and showed him dead body of Aman which was lying folded in one metal tin box (peti). Rajjak identified the dead body of his son Aman.

3.2. According to prosecution, around 4 - 5 months before the date of incident, Rajjak met Appellant at Zirape Galli when the

Appellant is alleged to have told him to break and discontinue having physical relationship with his wife Arifa, failing which Rajjak would face dire consequences. Rajjak denied having any physical relationship with Arifa and so replied to Appellant but Appellant rejected his reply. According to the prosecution families of both, Appellant and Rajjak had cordial relations and were on visiting terms to each other's house, however, since Appellant suspected Rajjak having physical relationship with his wife, Rajjak never visited Appellant's house. After identifying Aman's dead body, Rajjak confronted Appellant and asked him the reason for killing Aman, to which Appellant replied that since Rajjak continued keeping physical relationship with his wife, he took Aman from the school to his house and killed him by strangulation.

3.3. According to prosecution, first information received by police station in respect of crime was a phone call by Appellant himself to the police station at 12:10 a.m. on 29.11.2011. Diary entry of this phone call was made by on duty Head Constable Mr. Tupe stating that a telephone call from Mobile No.8888777427 was received informing that Appellant wanted help and requested the police to call back on the same number as talk time balance in his mobile phone was over. Head Constable Tupe returned the call and spoke to Appellant when he told him that he murdered Aman Bagwan, son of one of his relative and gave the address of his rented room near Golden Bakery,

Salunkhe wada, Zirape Galli. This information was immediately relayed to ASI - Taware, PC - Gaikwad, PC - Tupe, PC- Jadhav and API-Ware by 12:30 p.m. from the police station. At 12:40 p.m. another station diary entry was made pertaining to information received by ASI- Taware informing the police station on phone that Appellant had murdered a 12 year old boy called Aman Bagwan and his body was stuffed a tin box (peti). Between 12:45 a.m. and 1:00 a.m. the aforesaid information was relayed from the police station and police arrived at the spot of incident at about 1:00 a.m. At that time, Appellant was waiting outside his house alongwith some neighbours. On arrival enquiry was made as to who was Noor Ahmed Mohammed Bagwan who had informed the police upon which Appellant identified himself and led the police personnel to the spot of incident i.e. his rented room, opened the door and showed the tin box (peti) in which dead body of Aman was stuffed. Appellant himself opened the tin box and discovered dead body of Aman inside the tin box lying in folded condition.

4. First Information Report (FIR) was lodge by Rajjak with Phaltan City Police Station vide C.R. No.207 of 2011 under Section 302 IPC. Investigating Officer (I.O.) prepared spot panchanama vide Exhibit-22 and inquest panchanama Exhibit-30 and sent the dead body of Aman for autopsy on 29.11.2011. Seizure panchanama was

prepared and tin box admeasuring 27 X 16 X 11, clothes of the deceased Aman i.e. blue colour half shirt and grey colour full pant was seized. On 30.11.2011, Appellant cooperated with the investigation and led the Investigation Officer to the spot where he had hidden/disposed of the rope, cycle, school bag and one sim-card. Investigating Officer prepared the seizure cum spot panchanama and seized the school bag, note books, books, guide, one tiffin box, one steel dish having name of Shahid Rajjak Bagwan engraved upon it, white colour lace and one sim-card of Uninor Company. Postmortem report (PM notes) was issued by PW-9 - Dr. Sunil Darade in which cause of death of Aman was stated as “***death due to asphyxia due to probably strangulation***”.

5. After completion of investigation, chargesheet against Appellant was filed in the Court of Judicial Magistrate First Class, Phaltan on 27.02.2012. Since offence under Section 302 IPC is exclusively triable by the Court of Sessions, the Judicial Magistrate First Class, Phaltan committed the case to the Court of Sessions, Satara. Charge was framed vide Exhibit-7 against Appellant under Section 302 IPC to which he pleaded not guilty and claimed to be tried after having the particulars of the said offence read over and explained to him in vernacular language. Case of the Appellant is total denial. According to Appellant a completely false case has been filed based

merely on suspicion and also on account of the illicit relationship between Rajjak (father of Aman) and his wife.

6. To bring home the guilt of Appellant, prosecution examined 11 witnesses. Of these PW-2, 5 and 6 are panch witnesses of spot panchnama, seizure panchnamas; PW-4 – Rajjak Bagwan is complainant – father of deceased Aman; PW-7 – Ramesh Jadahv is the tea stall owner who had last seen Appellant with Aman at about 3:00 p.m. on 28.11.2011; PW-8 - Swati Mozar is teacher of Aman's school who testified that post the recess session Aman did not attend school; PW-9 - Dr. Sunil Darade is Medical Officer who carried out autopsy and prepared the PM notes and PW-10 - Hanumant Ware alongwith PW-11 – Rajendra More, are the two Investigating Officers. Call Data Records (CDR) was collected from Nodal Officer, Idea Company and marked as Exhibit-53, *inter alia*, pertaining to the call received by police station in the first instance at 12:10 a.m. (29.11.2011) from Appellant about commission of crime. Photographs of deceased Aman having his body stuffed in the metal tin box (peti) were marked as Exhibits 23 to 28. Another vital piece of evidence i.e. certified copy of the station diary entry number 2 of 2021 was marked as Exhibit-52. Appellant did not examine any defence witnesses nor examined himself on oath.

7. Ms. Kapadia, learned Advocate appearing for Appellant

submitted that in the present case there is no eye witness to incident of murder of Aman; that entire prosecution case is based on circumstantial evidence which is incomplete; that though it is alleged by prosecution that 4 - 5 months before incident, Appellant had threatened complainant and warned him to keep a distance from his wife or else face dire consequences, the said fact cannot be countenanced as motive since complainant did not file report or lodge complaint in respect of the same; hence theory of suspicion evolved by prosecution on the basis of the aforesaid reason cannot lead to the inference that Appellant committed the crime due to the said reason; that prosecution failed to establish that, the rented room in which the tin box having dead body of Aman was recovered belonged to and/or was rented by Appellant; that there was no rental agreement much less any agreement of whatsoever nature entitling the Appellant to occupy the rented room where Appellant is alleged to have been residing; that medical evidence relied upon by prosecution show the reason for death of Aman due to asphyxia and strangulation but prosecution has failed to prove that Appellant was instrumental in causing death of Aman; that there is business enmity and rivalry between complainant and Appellant over selling of fruits in the area and this could be one of the reason for the complainant to have raised suspicion against Appellant; that PW-7 – Ramesh Jadhav who has last seen the Appellant with Aman was not confronted with photographs

by the prosecution to identify the deceased and thus his testimony cannot be believed and therefore all the chain of circumstances has not been established by the prosecution to have been proved and the appellant deserves exoneration on reappreciation of evidence by this court. She has prayed for setting aside and quashing the impugned judgment dated 31.01.2013 passed by the learned trial court.

8. ***PER-CONTRA***, Mr. Hulke, learned APP has drawn our attention to the evidence of PW-3, landlord who had rented his room to Appellant for his residence, PW-7 – Ramesh Jadhav, tea stall owner who had last seen the Appellant with deceased Aman at his tea stall and PW-8 - Swati Mozar who has testified that post recess Aman did not attend school. On combined reading of the evidence and cross-examination of the aforesaid three witnesses, learned APP has placed reliance on evidence of the panchas to argue that chain of circumstances has been fully proven by the prosecution beyond reasonable doubt in the present case. According to him though there is no eye witness, case of the prosecution is based on circumstantial evidence borne out from the evidence of the prosecution witnesses; that the theory of motive in the present case stands proven since Appellant had a strong suspicion about Rajjak having illicit relations with his wife; that the station diary entry vide Exhibit-52 clearly indicts the Appellant as it was the Appellant's phone call from his own

mobile phone number registered with Idea Company which informed the police about the crime and the CDR exhibited on record proves the same; that it was only at the instance of the Appellant that articles belonging to Aman i.e. the school bag, note books, guide, tiffin box and steel plate bearing name of Shahid Rajjak Bagwan as also the other articles like lace were recovered from the place where they were disposed of by Appellant and lastly evidence of PW-7 clearly identifies colour of the clothes worn by Aman (school dress) and therefore the last seen theory stands proved. He therefore submits that the impugned judgment dated 31.01.2013 passed by the trial court be upheld.

9. We have perused the pleadings and material on record carefully. Submissions made by the counsel/Advocate have received due consideration.

10. The case of the prosecution is based on two circumstances, namely “motive” and “last seen together”. On scrutinizing the evidence of the prosecution witnesses as alluded hereinabove, it is clearly established that Appellant had a strong motive to commit the crime; that even though in so far as the business rivalry of Appellant with Rajjak with respect to selling fruits is concerned has not been brought to the fore save and except the statement in the examination-in-chief of Rajjak, a strong circumstance pertaining to the threat given by

Appellant to Rajjak for continuing to have physical relationship with his wife and Rajjak not visiting the residence of Appellant in Zirape Galli, needs to be countenanced and accepted as a strong motive.

11. That apart, the last seen together in the present case stands clearly established on the basis of evidence of the prosecution witnesses. PW-7 is the star witness who has established the last seen theory to the hilt; PW-7 knew the Appellant used to sell fruits in the market within the vicinity of his tea stall; he has specifically identified the Appellant having visited his tea stall alongwith a 12 year old boy at 3:00 p.m. in the afternoon; he has specifically identified the clothes worn by 12 year old who accompanied the Appellant and he has categorically stated that he has seen the Appellant taking 12 year old boy alongwith him thereafter the proximity of time between the last seen time by PW-7 and death of Aman very less in as much as it is presumed that some time in the evening of 28.11.2011, Appellant has strangulated Aman and thus in view of this proximity of time the last seen together theory stands clearly established.

12. Once the homicidal death is established, naturally the next step is to establish as to who is the author of the crime. In this regard, the prosecution case is based on circumstantial evidence. Rather, the job of the prosecution is tough in view of the settled position of law in the field. No doubt, the ocular evidence is not a prerequisite to

establish the crime, since it can be established by bringing various circumstances from which inference of guilt can be certainly and definitely drawn.

13. The first circumstance on which the prosecution is relying, is about a strong motive for commission of crime. The presence of motive for crime helps the prosecution to establish the case as a matter of circumstance and it strengthens the conclusion against the accused. When the case is based on circumstantial evidence, it provides an important link to satisfy the judicial mind about culpability of the accused.

14. Normally, there can be a proposition that every criminal act is done with a motive. In other words, motive is something which permits a man to form an intention to commit an act, meaning thereby, the motive is a desire and crime is a desired accomplishment. In true sense, motive is always hidden in the mind of the culprit which is a psychological phenomena. Keeping in mind the psychological aspect, the evidence on motive is to be understood and appreciated. Obviously, motive is to be gathered from variety of circumstances.

15. Then as an important link, the prosecution heavily relied on the well known “last seen together theory”. The principle of last seen together theory is explained by the Supreme Court in the decision in

the case of *State of Uttar Pradesh Vs. Satish*¹. It is observed that the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small, that the possibility of any person other than the accused being the author of the crime becomes impossible. Obviously, It is an inferential circumstance to rule out intervention of third party when there is proximity of time in between last seen and death of the victim.

16. Where the prosecution is relying upon the last seen theory, it must essentially establish the time when the accused and deceased were last seen together as well as the time of death of the deceased. If these two aspects are not established then it would create a major dent in the case of the prosecution. To establish last seen theory, possible link with the proximity of time is required to be established. This proportionately is to be applied depending upon the facts and circumstances of the given case. The reasonableness of the time gap, is therefore of great significance. If the time gap is very large, then it is not only difficult, but, may not be proper to infer that the deceased was last seen alive with the accused. If the proximity in between two things is established then inevitably it leads to the inference that the accused person was responsible for commission of the crime.

¹ 2005 (3) SCC 114

17. Before we advert to the chain of circumstances, it is relevant to consider the medical evidence in the present case, PW-9 – Dr. Sunil Darade, conducted autopsy of Aman between 9:00 a.m. to 10.15 a.m. on 29.11.2011. According to PM notes exhibited vide Exhibit-45 it is stated that the death of Aman was not suicidal or accidental but homicidal death and caused within 6 hours of taking the last meal. PM report confirms that semi digested food was found in stomach and therefore it is safe to conclude that Aman had food in his school during the recess after which Appellant took Aman with him. Medical evidence has confirmed the following external injuries on the body of the Aman:-

- (i) Abrasion with slight depression mark of size 26cm X 1c. Anteriorly over the thyroid cartilage. Reddish brown mark. On incision opening underlinged structures injured. Bluish black blood ooze;
- (ii) Transverse abrasion over left petral region 1.15cm. X 0.1cm Reddish brown colour;
- (iii) Multipleabrasions over nose, nostril lips of size 0.5 X 0.5 c.m. 1.00 cm X 0.5 cm. Reddish Brown.

18. Other anti mortem injuries have also been seen which show swollen eyelids, bluish eyelids, protruded eyeballs, conjunctival haemorrhages, reddish fluid oozing from nose and mouth, tongue

plain bluish and in between incisors and cause of death due to asphyxia and probably strangulation.

19. That apart, inquest panchnama exhibited vide Exhibit-30 proved by prosecution show that when police took out the dead body of Aman from the tin box there were scratch marks on his nose and cheeks; blood was oozing out of his nose and his tongue was under the teeth. Scratch marks on stomach and ligature marks on his neck were found, his palms were tied and nails were converted into bluish colour. PW-3 has admitted in his cross-examination that police told him that murder took place in the rented room and in his presence, Appellant being present in the room was told by police to open the tin box. Prosecution has proved the contents of panchnama Exhibit-30, which corroborate the medical evidence on record. Injuries cited above are also stated by complainant Rajjak vide Exhibit-31 and PW-10, the drawer of inquest panchnama.

20. Reading of the aforesaid evidence on the whole clearly show that the prosecution's case that death of Aman is homicidal stands proved.

21. In the above backdrop, we would now to address the chain of circumstances based on the prosecution evidence/witnesses for reappreciating the evidence on record.

22. It is seen that deceased Aman attended the school on

28.11.2011. PW-8 – Swati Mozar teacher of Smt. Premalatatai High School, Phaltan in her evidence has stated that Aman was present in school till the 5th period after which there was a recess. In the recess Aman had eaten rice distributed by the school under the *Shaley Posha Aahar* Scheme; that she had seen him at that time but thereafter she did not see him in school. The chain of circumstances begins with this first circumstance i.e. the evidence given by PW-8. Thereafter the evidence of PW-7 – Ramesh Jadhav becomes relevant and states that on 28.11.2011 at 3:00 p.m. the Appellant came to his tea stall alongwith one school boy aged 12-13 years old. He has in his evidence further stated the school boy was wearing a school dress and having a school bag; he has identified the blue colour half shirt and grey colour full pant worn by the school boy; he has stated that Appellant had tea at his tea stall and thereafter went away alongwith the school boy. He has deposed that he identified the Appellant and knew the Appellant since the Appellant used to sell fruits near his stall. This piece of evidence assumes significance because clothes of the school boy Aman as identified by this witness and recovered during spot panchnama are of the same colour. Further and most important is the fact that PW-7 is the witness who has last seen the Appellant with deceased Aman and thus the last seen theory stands proven with the evidence given by PW-7. It is seen that immediately thereafter and within a few hours, death of Aman occurred. What is important to

note is that the time gap between the last seen together time and death of Aman is very short and it clearly proves to be the hypothesis that Appellant is the author of the crime. Notwithstanding the fact that though there was an apparent motive for Appellant to commit the crime as alluded to hereinabove, the last seen theory stands proven by PW-7. The next circumstance in the chain of circumstances is the evidence given by PW-3 – Limbaji Salunkhe, landlord who had given the rented room to the Appellant for his residence alongwith his family. The landlord has testified that though there was no written agreement, however there was an oral agreement inducting and allowing Appellant and his family to reside therein. Defence has not been able to prove through any of the prosecution witnesses that Appellant had no nexus with the rented room; that the Appellant has not disowned the fact that he was not residing in the rented room. Evidence of PW-5 further highlights in the affirmative the fact that Appellant was indeed given the said room for his residence; PW-3 in his evidence states that at about 1:00 a.m. in the intervening night on 28.11.2011 and 29.11.2011, when the police came and confronted him and asked him to act as the prosecution pancha witness, he agreed and accompanied the police to the said room and at that time, the Appellant was present in the said room and identified the tin box and opened it to find the dead body of Aman wearing the school uniform in the tin box. PW-3 has identified the blue colour shirt and

grey colour full pant worn by Aman. He has further identified scratch marks on his nose and cheeks, blood oozing out of his nose; sticks and stomach under his teeth, ligature mark on his leg and blue colour nails. Following this seizure of articles during spot panchnama further proves a circumstance to complete the chain of circumstances. It is pertinent to note that seizure panchnama was at the behest of Appellant and it is the Appellant only who had knowledge about the place of disposal of the articles i.e. the school bag, books, tiffin box and steel plate belonging to Aman. Recovery of these articles complete the chain of circumstances. The most important circumstance in the present case is the recovery of dead body of Aman in the rented room which is proven to be the resident of Appellant. The entire chain of circumstances as alluded to hereinabove thus stands proven without any break in between and is based on the evidence of the prosecution witnesses. Evidence of the witnesses has not been shattered or discredited in cross-examination.

23. In the present case, motive of Appellant that complainant should stop having physical relations with his wife therefore arouses deep suspicion leading to the fact that Appellant has committed the murder of Aman. In other words, motive thus stands proven and established when one reads the evidence of the prosecution witnesses. Evidence of PW-7 clearly establishes the last seen theory and it is

therefore establish that atleast till 3:00 to 3:30 p.m. on the date of the incident the deceased boy Aman was in the company of the Appellant. No circumstance is brought on record to falsify the evidence of PW-7 and thus the last seen theory stands conclusively established.

24. In addition to the above, medical evidence and the evidence of the two Investigating Officers on a careful analysis establishes that deceased Aman was in custody of Appellant since 3:00 p.m. of 28.11.2011; that it is also proven by prosecution that Appellant made a phone call to the police station at 12:10 hours giving information of murder which was recorded in the station diary, which has been exhibited vide Exhibit-52, and being a public document stands proven in evidence; that phone number from which the police station received the information was mobile phone No.8888777427; this phone number has been identified by the caller ID install in the police station and the CDR record produced vide Exhibit-53 clearly proves the call received from the above number at the given time and thus under the amended provisions of Section 85B of the Indian Evidence Act, 1872 the secured electronic record has presumptive value unless the contrary is proved. It is pertinent to note that vide panchanama Exhibit-37 one mobile phone and sim-card of the same number i.e. 8888777427 has been seized from custody of Appellant. Clothes mentioned in seizure panchanama, Exhibit-20 are the same clothes

which are identified and stated by the witnesses which were worn by deceased Aman. Cause of death is shown as asphyxia due to strangulation as per medical evidence and stands proven from the ligature mark on the neck. Evidence given by prosecution witnesses has not been shattered or discarded during their cross-examination. Circumstances stated above thus stand proven by the prosecution firmly to infer guilt of Appellant in having committed murder of Aman; the above circumstances unequivocally point towards guilt of Appellant and if taken cumulatively form a chain so complete that it is conclusive to come to a decision that within all human probability, the crime of murder of Aman has been committed by Appellant and no one else. The aforementioned chain of circumstances and circumstantial evidence thus stand completed and is incapable of explanation of any other hypothesis than that of the guilt of Appellant.

25. The Supreme Court in the case of *State Of U.P. Vs. Satish (supra)* while analyzing evidence on the basis of the last seen theory has held that the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused

when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the Appellant were seen together by the prosecution witness.

25.1. In the present case, evidence of PW-7 clearly establishes the last seen together theory; identification of deceased Aman wearing school uniform/clothes gives credence to the last seen theory and the time gap between the time of having last seen deceased Aman and his murder/death being very short clearly points to the guilt of Appellant and indicts him.

26. The Supreme Court in the case of ***Shankarlal Gyarsilal Dixit vs. State of Maharashtra***² has laid down the fundamental principles to be kept in mind while adjudicating a criminal case founded on circumstantial evidence. Paragraphs 31 and 32 of aforementioned decision are relevant and read thus:

“31. It causes us some surprise that the learned Additional Sessions Judge, Akola, who tried the case, has not shown any awareness of the fundamental principle which governs cases dependent solely on circumstantial evidence. Nowhere in his judgment has the learned Judge alluded, directly or indirectly, to the principle that in a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of

2 1981 AIR 765 : 1981 (2) SCC 35

circumstantial evidence should be set out in the judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

32. *The High Court, it must be said, has referred to the recent decisions of this Court in Mahmood v. State of U.P. [(1976) 1 SCC 542 : 1976 SCC (Cri) 72 : AIR 1976 SC 69] and Chandmal v. State of Rajasthan [(1976) 1 SCC 621 : 1976 SCC (Cri) 120 : AIR 1976 SC 917] in which the rule governing cases of circumstantial evidence is reiterated. But, while formulating its own view the High Court, with respect, fell into an error in stating the true legal position by saying that what the court has to consider is whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the “shadow of doubt”. In the first place, “shadow of doubt”, even in cases which depend on direct evidence is shadow of “reasonable” doubt. Secondly, in its practical application, the test which requires the exclusion of other alternative hypotheses is far more rigorous than the test of proof beyond reasonable doubt.”*

[emphasis supplied]

26.1. It is seen that in the present case, the circumstantial evidence is so strongly established as deciphered above that there is no escape from the hypothesis that it is the Appellant and the Appellant only who has committed the ghastly murder of the deceased boy Aman.

27. In the case ***G. Parshwanath Vs. State Of Karnataka***³, in paragraph No.11, while enunciating the law relating to appreciation of evidence in a case based on circumstantial evidence, the Supreme Court has held as under:-

“11. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it

3 (2010) 8 SCC 593

consists of an eye-witness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is not derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The Court thereafter has to consider the effect of proved facts. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false

plea or false defence may be called into aid only to lend assurance to the court.”

27.1. In the present case, PW-7 – Ramesh Jadhav has identified the Appellant alongwith one boy who had come to his tea stall at 3:00 p.m. on 28.11.2011; he has also identified the clothes worn by the boy i.e. deceased Aman, as bluish colour shirt and grey colour pant; he has also identified the boy as he had a school bag; therefore, in these circumstances, there is no question of identification of the accused or of the said boy, because the murder of said boy has taken place and the prosecution has established the last seen theory together of the culprit and the victim and this fact is proved beyond any reasonable doubt. Not only this, recovery of the dead body is made from the rented room of accused himself, which is in his possession, at his instance and therefore, the identification parade does not play any role in this case.

28. In all these circumstances and after appreciating the entire evidence on record, we hold that prosecution has proved the fact that on 28.11.2011 at about 3:00 to 3:15 p.m. in Salunkhe Wada, situated at Zarape Galli, Phaltan, Appellant committed the murder of son of complainant namely Aman by strangulation on harbouring suspicion that complainant maintained illicit relations with his wife and to take revenge, he committed the murder.

29. In view of the above, we are of the considered opinion that

Appellant having committed the ghastly murder of Aman who was 12 years old and the motive having been proved, for no fault of the deceased, the sentence arrived at by the learned trial court of convicting Appellant for life imprisonment does not call for any interference whatsoever and the same stands upheld in view of the aforesaid discussion and findings.

30. Criminal Appeal No.680 of 2013 is hereby dismissed.

31. This Court had requested Advocate Ms. Dhruti Kapadia to espouse the cause of the Appellant in present Appeal; she has ably assisted the court in appreciating the evidence on record; her professional fees quantified as per rules to be paid to her by the High Court Legal Aid Services Committee, Mumbai within 4 weeks from the date of production of authenticated copy of this Judgment.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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