

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-97-DB of 2010 (O&M)

Reserved on: 07.09.2022

Date of Decision : 12. 10. 2022

Kanwar Pal @ Palu

...Appellant

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. Vinod Ghai, Sr. Advocate, with
Ms. Kanika Ahuja, Advocate
for the appellant.

Mr. P.P. Chahar, DAG, Haryana.

N.S.SHEKHAWAT, J

The present appeal is directed against the judgment of conviction and order of sentence dated 08.01.2010 passed by the Court of learned Sessions Judge, Gurgaon (now Gurugram), whereby, the appellant had been held guilty under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year.

The brief facts of the case are that on 17.12.2008, on getting a telephonic message regarding the murder of a woman and two children, Inspector Mahabir Singh alongwith other police officials reached the spot Shiv Lal Ki Dhani in village Shikhopur,

District Gurugram and recorded the statements of the complainant Raj Pal Ex.PA and after recording the statement, he made his endorsement Ex.PA/1 and sent the same to the Police Station for registration of the FIR Ex.PA/2. As per the complainant Raj Pal, he was a pensioner from army and had three children. His eldest daughter Sushma was married to Kanwar Pal (appellant) son of Dharam Singh in February 2000 and out of the said wedlock, a son and daughter were born. At present her daughter Shagun was aged 07 years whereas her son Preetpal was aged about 4 ½ years. His son-in-law Kanwar Pal used to stay at home and was a drunkard. His daughter often used to complain about him, but he made her understand. His daughter used to visit them twice or thrice in a year and recently his daughter had visited them for attending a marriage and had returned back to Shikhopur on 30.11.2008. At about 07.00 a.m., on 17.12.2008, he received a telephonic call from Dharam Singh, father of Kanwar Pal and was informed that Sushma, Shagun and Preetpal had died. On getting this information, the complainant reached there and found Sushma, Shagun and Preetpal to be dead on the bed. Kanwar Pal was not found at home. Last evening also the complainant made a telephonic call at about 07.00 p.m., but his call could not connect. When he asked Dharam Singh, he told the complainant that they had gone to sleep. The complainant along with his relatives had reached village Shikhopur and found his daughter Sushma, his maternal grand daughter Shagun and maternal grand son

Preetpal lying dead on a bed, having marks on their necks, who had been killed by strangulation. With these broad allegations, the FIR in the instant case was got registered by Raj Pal complainant. The investigation formally commenced and the FSL team as well as finger print expert were called at the spot besides photographer Vikas. The inquest proceedings Ex.PJ, Ex.PK and Ex.PL with regard to three victims were conducted and the incriminating evidence was collected from the spot. Even a scarf was taken into possession and separate memos were prepared by the police which were attested by Satvir Singh Ex. Member Panchayat. The dead bodies were subjected to postmortem examination after moving formal application in this regard. In the evening of 19.01.2009, Abhey Singh and Naresh residents of Chapra Saleempur produced Kanwar Pal @ Palu, accused before the police and the appellant was formally arrested by the police and the statements of the witnesses were recorded under Section 161 Cr.P.C. After completion of investigation and finding sufficient incriminating evidence against the present appellant, the report under Section 173 Cr.P.C., was prepared and presented in the competent Court by the Investigating Officer.

During the course of trial, the prosecution examined complainant Raj Pal as PW1, who supported the case of prosecution and narrated the similar facts as mentioned in the FIR. Even, he was cross-examined at length by the defence. The prosecution further examined Abhey Singh as PW2, who was uncle of Sushma (since

deceased). He stated that his niece Sushma was married to appellant on 25.02.2001. In the night intervening 16/17.12.2008, the appellant murdered his niece Sushma and her two children, by colluding with his father Dharam Singh and brother Kapil. The appellant was a drunkard from the very beginning and used to beat his niece and her children. On 19.01.2009 at about 08/09.00 a.m., he was sitting with Naresh son of Kehar Singh and the appellant came there and while weeping he told them that he was a very bad person, because he oftenly visited the women of easy virtues and had a suspicion that he was suffering from AIDS. He confessed before him that he had murdered his wife and children and requested them to hand him over to the police. PW2 Abhey Singh informed the complainant and produced the accused before the police. ASI Satya Parkash was examined as PW3 who recorded the formal FIR and made his endorsement. PW4 Vikas had clicked the photographs of the dead body with the help of digital camera and exhibited the same as Ex.P1 to P17. PW5 HC Ravi Kumar moved application to get the postmortem examination done. PW6 Girish Kumar, Draftsman, prepared the scaled site plan Ex.PF on the asking and demarcation of the Investigating Officer. PW7 Constable Raj Kumar was deputed to hand over the special report to the learned Illaqa Magistrate and deposed to that effect. The prosecution examined PW8 Dr. Pawan Kumar Chaudhary, who conducted the postmortem examination on three dead bodies and found the ligature marks on their persons. He

stated that the cause of death in all three cases was asphyxia due to manual throttling. He further opined that the possibility of causing death with the help of scarf Ex.P19 cannot be ruled out and proved the exhibits and the postmortem reports Ex.PG/1 to Ex.PG/3. The prosecution also examined PW9 Inspector Mahabir Singh, who got conducted the investigation in the matter as explained above. The prosecution examined PW10 Pawan Kumar, learned Judicial Magistrate, in whose Court an application Ex.PV was moved for getting the medical examination of the accused from psychiatrist at PGIMS, Rohtak and he passed the orders Ex.PV/1 to PV/2. The said application was withdrawn on 27.01.2009 by the learned counsel for the appellant vide his statement Ex.PV/3 and he passed the order Ex.PV/4. The prosecution further examined PW11 Neelam Lab Technician, ICTC, (Integrated Counselling and Treatment Centre of the AIDS), General Hospital, Gurugram. She deposed that police had brought the appellant in the hospital for confirmation of AIDS and after examining the blood samples, she found that he was not suffering from AIDS. She exhibited her report as Ex.PX.

After the conclusion of the evidence, the entire case was put to the appellant/accused in his statement under Section 313 Cr.P.C. In the concluded part of his statement, he stated as under:-

"I am innocent. I have been falsely implicated in this case. I am of very sensitive and impulsive nature and takes small things to my heart. My father to my

reckoning is a miser and is of extremely dominating nature. No even a spec can move in the house without his approval. On or about or 11.12.2008. I had a tiff with my father with regard to some money to be advanced to Surender son of Bharat Singh, my first cousin which he required for the purpose of Bhaat. I left the house in fit of anger and went to Haridawar where I stayed in various Ashrams. Earlier also for similar reasons I had been leaving my house for weeks together. I roamed aimlessly at various places as I was disturbed. Lastly I went to Jodhpur. I used to eat in Lungers due to shortage of money. Being fed up out of curiosity I rang up my relation Jasbir son of Mahender resident of DLF Phase IV. Gurgaon but on second thought I disconnected the call. Then Jasbir rang up the same number which was of a STD. He enquired from the STD Booth about me. I was still there and I had a talk with him who informed that my mother was on death bed. On his coaxing I told him that I shall be boarding a train on the next morning i.e 17.01.2009. On the next date. Ravinder son of Chander resident of Chakarpur, Ratish son of Deep Chand and Sunil son of Muni Lal residents of Khara Khurampur, along with Madan Driver of Farrukh Nagar came to Jodhpur in a Tata Sumo HR-26-P-6823.

They searched me at various places and ultimately they found me in the waiting room of the railway station. They brought me to a hotel where after a ASI and a constable also arrived there. They had gone to make enquiries regarding location of STD from where call was made by me. I was brought to PS Kherki Daula on the intervening night of 17/18.01.2009. I was later told by my father that when I was located I was disoriented and was in rags and depressed. I am totally innocent. I am already a shattered man having lost my family.”

In his defence, the appellant/accused examined R.K. Singh, Nodal Officer, Bharti Airtel Ltd., New Delhi, as DW1, who brought the record pertaining to mobile number 9810342885, in the name of Mr. Jasbir Yadav and proved the call details as Ex.DD. He also proved the request form Ex.DE and the PAN card Ex.PF attached with the application. The learned trial Court vide impugned judgment and order, convicted and sentenced the appellant as indicated above. Assailing the findings recorded by the trial Court, the appellant has preferred the instant appeal before this Court.

It is the admitted case of both the sides that the entire case is based on circumstantial evidence. The learned senior counsel appearing for the appellant has challenged the judgment of learned trial Court on the ground that the entire chain of circumstances has not been established beyond reasonable doubt so as to leave any room

for a hypothesis, which is not compatible with the innocence of the accused. It was argued vehemently by him that the facts of the case may raise a grave suspicion that the appellant might have committed the crime, but such strong suspicion cannot take place of the proof, which is the sole responsibility of the prosecution to establish beyond reasonable doubt. It was vehemently contended that no motive had been established by the prosecution for the appellant to kill his own wife and two minor children. It was further contended that motive may not be necessarily relevant in a case of direct evidence, but motive assumes significance in a case, which is essentially based on circumstantial evidence and the present case being one based on circumstantial evidence, the motive must be established. The learned senior counsel further submitted that there were contradictions in the motive as alleged by Raj Pal complainant/PW1 and Abhey Singh PW2. As per Raj Pal PW1, it was alleged in the FIR as well as in the Court that the appellant was a drunkard, not earning anything and used to beat and harass his wife and children. Whereas as per Abhey Singh PW2, the appellant had confessed before him that he had committed the crime since he suspected himself to be suffering from AIDS and was ashamed of this fact. Still further, the motives were not corroborated by any independent evidence or any complaint being lodged against the appellant at any point of time. Even the medical report Ex.PX regarding AIDS dated 20.01.2009 was found to be negative. Still further, it was argued that the relations between the

family of the appellant and the complainant were cordial and both the sides had been on visiting terms with each other and the appellant had been attending the functions in the family of the complainant. Still further, it was submitted that as per Abhey Singh PW2, the appellant suffered an extra judicial confession before him and one Naresh on 19.01.2009 at the village of Abhey Singh PW2 and this extra judicial confession made before PW2 was not believable. It was highly unlikely that the appellant would repose faith on PW2 to make a confession who is uncle of Sushma (since deceased) and closely related to the complainant party. Still further, Abhey Singh PW2 belonged to a different village and district from that of the appellant and it was highly unlikely that the appellant would go and make a confession before him. It was further submitted that appellant was arrested from Rajashthan prior to 19.01.2009 and the said fact was corroborated from DDR Entry No. 33 dated 16.01.2009 made at 07.15 p.m., Ex.DB vide which ASI Siri Chand alongwith Head Constable Mahipal had departed from Gurugram to Rajashthan. Apart from that, there was a further DDR entry No. 35 dated 19.01.2009 registered at 11.00 p.m., Ex.DC vide which they returned from Jaipur Rajasthan. Consequently, to make the evidence of extra judicial confession, the Investigating Agency had wrongly shown the arrest of the petitioner on 19.01.2009 at Gurugram. Still further, it was submitted that the presumption under Section 106 of the Evidence Act cannot be raised against the appellant as the prosecution had

failed to discharge its initial onus that it was only the appellant who was present in the house of the deceased at the time of alleged occurrence. Thus, the appellant has been wrongly convicted by the learned trial Court.

Countering the arguments raised by the learned senior counsel appearing the appellant, the learned State counsel has vehemently submitted that the prosecution was successful in proving the case against the appellant and the circumstances conclusively established the guilt of the appellant. He further submitted that both the prosecution witnesses PW1 and PW2 are the material witnesses, who had proved the involvement of the appellant in the crime and even the said fact was duly established during the course of investigation as well as the trial and prayed for upholding the judgment of conviction and order of sentence passed by the learned trial Court.

We have heard learned counsel for both the sides and perused the evidence.

In the instant case, there is no eye witness and the entire case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an adverse inference of guilt of the accused is sought to be drawn must be cogently and conclusively established. Thus, circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that

even in all human probabilities the crime was committed by the accused and they should be capable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

It has been held by the Hon'ble Supreme Court in the matter of **Sharad Birdhichand Sarda** Vs. **State of Maharashtra** 1984 Supreme Court Cases (Cri) 487 as under:-

153. *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra** where the following observations were made: [SCC para 19, p. 807: SCC (CrI) p. 1047]*

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may

be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

In the instant case, the prosecution case primarily rests on the testimony of Raj Pal PW1, who had lodged the FIR Ex.PA/2. He clearly stated in the FIR Ex.PA/2, which was promptly registered that his daughter Sushma was married to the appellant in February 2000 and was blessed with two children, namely, Shagun and Preetpal aged 07 years and 4½ years, respectively. He had clearly deposed that his son-in-law Kanwar Pal (appellant) used to stay at home, who was drunkard. His daughter often used to told him about his misdeeds and he always made her understand. Still further, the said witness while

appearing as PW1 deposed the facts as submitted in the FIR initially by him. He clearly stated that his son-in-law, i.e., the appellant was a drunkard and idle and was not earning anything. He used to beat and harass his wife and the children. The defence has failed to lead any evidence to the contrary. Still further, the said witness was searchingly cross-examined, but his testimony could not be shaken in any manner by the learned defence counsel. Rather the allegations were further explained in detail during the course of cross-examination, which proved the involvement of the present appellant. He explained that his daughter was subjected to cruelty and he had given a washing machine to the appellant in the month of October 2008 on the eve of Diwali. Still further, Abhey Singh, who is uncle of the deceased Sushma clearly stated that the appellant was a drunkard from the very beginning and used to beat his niece Sushma and her children. Even, he had completely supported the case of the prosecution in all material particulars. Apart from that the testimonies of the said witnesses were duly supported by the testimony of Dr. Pawan Kumar PW8, who conducted the postmortem examination on all three dead bodies. He clearly opined that the cause of death of all the three victims was asphyxia due to manual throttling. He clearly stated that ligature marks were found on the three dead bodies and the possibility of death being caused by the scarf Ex.P19 could not be ruled out. Still further, even though the complainant tried to name Dharam Singh and Kapil father and brother of the appellant,

respectively, but the police conducted the investigation and found that only the appellant was involved in the crime and declared both the other co-accused, namely, Dharam Singh and Kapil as innocent. Thus, there was enough incriminating evidence and the prosecution evidence had established that the deceased alongwith her two children was staying in her home with the present appellant. Even, the appellant led no evidence to show that he was either living separately or was not present at the place of occurrence on the night intervening on 16/17.12.2008. Still further, the accused rather tried to take up a plea of *alibi*, however, he failed to adduce any evidence to support the said plea.

Still further, in the initial version, i.e., FIR Ex.PA/2, which was got registered by the complainant with promptitude, the complainant specifically named the present appellant and submitted that the appellant used to stay at home with his wife Sushma and there were two children, namely, Shagun and Preetpal (both deceased). Even, there was no evidence to the effect that some other person was living in the said matrimonial home. Still further, Raj Pal, who is the father of Sushma (since deceased) clearly stated that his son-in-law was a drunkard and used to beat his wife Sushma and her two children. Consequently, it is apparent that all the three deceased were subjected to cruelty and harassment by the appellant within four walls of the house and it was impossible to find witnesses and it was obligatory on the appellant to satisfy the Court as to how, where and

in what manner Sushma and her two children parted company with him. This is based on the principle that as per the case of the prosecution, the appellant was residing with his wife Sushma and their two children, namely, Shagun and Preetpal and it was for the appellant to explain the circumstances, in which, they parted the company. No such valid plea, duly substantiated by the evidence has been raised by the present appellant. Thus, the prosecution had discharged the initial burden and provisions of Section 106 of the Evidence Act can be safely invoked in the instant case.

It has been held by the Hon'ble Supreme Court in the matter of **Trimukh Maroti Krikan** vs. **State of Maharashtra** 2006 (10) SCC 681 as follows:-

*“17. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In **Nika Ram v. State of H.P., (1972) 2 SCC 80**, it was observed that the fact that the accused alone*

*was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In **Ganeshlal v. State of Maharashtra (1992) 3 SCC 106**, the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In **State of U.P. v. Dr. Ravindra Prakash Mittal AIR (1992) 3 SCC 300** the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and*

their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In State of T. N. v. Rajendran the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime”.

It has been held by the Hon'ble Supreme Court in the matter of **State of Rajasthan** Vs. **Kanshi Ram** 2007(1) RCR (Criminal) 131 as follows:-

“It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider

*his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in **Re. Naina Mohd. AIR 1960 Madras, 218**".*

Consequently, we find no substance in the submissions raised by the learned senior counsel for the appellant and find that the appellant has failed to offer a reasonable explanation in discharge of the burden placed on him under Section 106 of the Evidence Act and this itself provides an additional link in the chain of circumstances.

The learned senior counsel for the appellant vehemently contended that motive plays an important role in a case of circumstantial evidence and it has to be proved on record just like any other evidence. It is vital piece of evidence, which links the entire chain of circumstances but in the facts and circumstances of the instant case, it has not been proved conclusively by the prosecution and the appellant is liable to be acquitted only on this ground. In the instant case, the prosecution had led sufficient circumstantial evidence to prove the complicity of the appellant in the crime. No doubt, in a case of circumstantial evidence, the motive should ordinarily be proved against the accused, however, the absence thereof cannot be a ground to reject the prosecution case. In the instant case, Raj Pal PW1 clearly stated that the appellant/accused was not doing anything in life and used to remain idle at home. He

used to torture and harass his daughter, i.e., Sushma and her two children, namely, Shagun and Preetpal (all three were murdered). Ultimately, to get rid of all of them, he committed the murder of his three family members. Still further, he appeared before Abhey Singh PW2 and further tried to mislead him by saying that he was suffering from AIDS and consequently he committed the murder of his wife Sushma and both the children, to save them from the stigma. The learned senior counsel for the appellant vehemently contended that with regard to the motive, the statements of Raj Pal PW1 and Abhey Singh PW2 were contradictory, however, we find no substance in the same. Raj Pal PW1 explained the motive in detail. He clearly stated that the appellant used to remain idle at home and used to beat and torture his wife and both the children. Apparently, the murder was committed as the appellant wanted to get rid of his family members. Still further Abhey Singh PW2 clearly deposed with regard to the motive, as falsely claimed by the present appellant. In fact, the appellant tried to mislead PW2 by stating that he was suffering from AIDS, however, the prosecution moved an application to the lower Court and the appellant was subjected to medical examination and vide medical report Ex.PX dated 20.01.2009, his report regarding AIDS was found to be negative. It can never be stated that the statements of Raj Pal PW1 and Abhey Singh PW2 are contradictory so far as the motive is concerned.

Still further, it has been held by the Hon'ble Supreme Court in the matter of **Praful Sudhakar Parab** Vs. ***State of Maharashtra***, (2016) 12 SCC 783 as follows:-

26 *Motive for committing a crime is something which is hidden in the mind of the accused and it has been held by this Court that it is an impossible task for the prosecution to prove what precisely have impelled the murderer to kill a particular person. This Court in **Ravinder Kumar Vs. State of Punjab**, has laid down following in para 18: (SCC pp. 697-98).*

*“18... It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. In this connection we deem it useful to refer to the observations of this Court in **State of H.P. Vs. Jeet Singh**: (SCC p. 380, para 33)*

'33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to

commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.”

27. *Further in Paramjeet Singh Vs. State of Uttarakhand, this Court held that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. Following was stated in para 54: (SCC p. 457)*

“54. So far as the issue of motive is concerned, the case is squarely covered by the judgment of this Court in Suresh Chandra Bahri. Therefore, it does not require any further elaborate discussion. More so, if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the

prosecution case. (Vide: State of Gujarat Vs. Anirudhsing).

(emphasis in original)

28. *The High Court while considering the motive has made following observations at p. 46: (Praful Sudhakar case, SCC onLine Bom Para 70)*

“70. Although prosecution is not very certain about the motive upon taking into consideration the evidence of PW4 and PW6, a faint probability is created, regarding intentions of the accused to lay hands on the cash which could have been in possession of the victim, as against the initial story that the accused was enraged against the victim, because the victim used to tease him on the point of his marriage with a bar girl Helen Fernandes. Motive is a mental state, which is always locked in the inner compartment of the brain of the accused and inability of the prosecution to establish the motive need not necessarily cause entire failure of prosecution.”

The learned senior counsel for the appellant vehemently contended that the appellant had no reason to make an extra judicial confession before Abhey Singh PW2, who was the uncle of Sushma (since deceased) and the extra judicial confession made before Abhey

Singh PW2 was not believable. It was highly unlikely that the appellant would repose faith on a witness to make a confession, who is the uncle of Sushma (since deceased). Still further, Abhey Singh PW2 did not hold any position or authority and Naresh, who was an independent witness was not examined. In fact, no doubt extra judicial confession is a weak kind of evidence, which requires corroboration. However, when the extra judicial confession is corroborated by other circumstantial evidence, it can be believed by the trial Court. Whenever a Court, upon due appreciation of entire prosecution, intends to base a conviction on an extra judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra judicial confession suffers from material discrepancies or inherent improbabilities or does not appear to be cogent, it may be unsafe for the Court to base a conviction on such an confession. On a proper analysis of the evidence led by the prosecution, in the light of various judgments passed by the Hon'ble Supreme Court and this Court, we find that there is no substance in the submissions made by the learned senior counsel for the appellant. No doubt, Abhey Singh PW2 was related to Sushma (since deceased), but that is no ground to reject his testimony as the said witness has withstood the test of cross-examination. Still further, some times the accused feels that he is close to some relative of the deceased or he may get some undue support from such relative, there is nothing unusual on the part of the

appellant in approaching such a relative of the deceased. In the instant case, the appellant approached Abhey Singh PW2 and stated that he was suffering from AIDS and to save his family from shame, he committed the murder of his wife and two children. Still further, Abhey Singh PW2 believed the version of the appellant and the prosecution moved application Ex.PT/1 before the Medical Officer, Government Hospital, Gurugram on 20.01.2009 as he was referred to concerned for his medical examination. The prosecution examined PW11 Neelam, Lab Technician, ICTC, (Integrated Counselling and Treatment Centre for AIDS) General Hospital Gurugram, who took his blood sample and found that he was not suffering from AIDS and she exhibited the report as Ex.PX. Thus, the prosecution has been able to successfully prove that the appellant had appeared before Abhey Singh PW2 and had raised a false plea regarding suffering from AIDS and the testimony of PW2 is liable to be believed by this Court. No doubt, the testimony of a related witness has to be scrutinized with care and circumspection, but it can be always be believed if the same inspires the confidence. We have gone through the testimony of Abhey Singh PW2 and found that the trial Court had correctly placed reliance on the same to base the judgment of conviction.

The learned senior counsel appearing for the appellant has vehemently contended that the appellant was actually arrested by the police from Rajasthan prior to 19.01.2009 and the said fact is

corroborated from DDR Entry No. 33 dated 16.01.2009 made at 07.15 p.m. (Ex.DB) vide which ASI Siri Chand alongwith Constable Mahi Pal had departed from Gurugram to Rajasthan. However, there is DDR No. 35 dated 19.01.2009 made at 11.00 p.m., Ex.DC, vide which they had returned from Rajasthan. Consequently, to make out a case of extra judicial confession, the Investigating Agency had shown the arrest of the petitioner on 19.01.2009 at Gurugram, by showing that the appellant was produced by Abhey Singh PW2. However, we find that the arguments raised by the learned senior counsel is not tenable on perusal of the DDR entries Ex. DB and Ex. DC. The case set up by the present appellant is that he was arrested by the police from Jodhpur prior to 19.01.2009 and his arrest was wrongly shown at Gurugram by the police. Even in his statement under Section 313 Cr.P.C., the appellant/accused stated that the police had gone to Jodhpur to arrest him and he had actually arrested from there. However, there is no force in the said argument. First of all, the prosecution did not rely upon the testimony of ASI Siri Chand or Head Contable Mahi Pal as they were not authorized to conduct any investigation. Still further, the DDR Entry No. 33 Ex.DB dated 16.01.2009 shows that ASI Siri Chand and HC Mahi Pal had left for Rajasthan for conducting the investigation in the instant case. Still further, the DDR entry Ex.DC dated 19.01.2009 made by ASI Siri Chand shows that he alongwith Head Contable Mahi Pal had returned from Jaipur (Rajasthan) after visiting Jaipur in connection with the

investigation of the instant case. The said two DDR entries Ex.DB and Ex.DC clearly show that ASI Siri Chand had not visited Jodhpur, where the present appellant was allegedly present and claimed that he was arrested from there. Still further, PW9 Inspector Mahabir Singh Investigating Officer clearly stated in his cross-examination that ASI Siri Chand had not investigated this case, even though he may have sent him for investigation. Even, ASI Siri Chand and Head Constable Mahi Pal were sent in routine to Jaipur and not Jodhpur, without any specific information. Since the location of mobile of the appellant appeared towards Rajasthan, so they were sent in that direction. He further stated that before they returned, the accused had already been produced in the police station. Consequently, the said evidence does not advance the case of the defence in any manner.

From a perusal of the case of the prosecution, it is apparent that just to wriggle out of the charge, the present appellant tried to mislead and had taken up three false pleas, i.e., AIDS, insanity and plea of *alibi*. The accused was produced before the police by Abhey Singh PW2 and Naresh on 19.01.2009 and he disclosed that he was suffering from AIDS. Consequently, the police immediately moved an application Ex.PT/1 to the Medical Officer, Government Hospital, Gurugram and his test was conducted. He tested negative for AIDS and his stand was found to be false. He again had taken a plea that he was insane and was suffering from mental disease. Consequently, again on 23.01.2009, the appellant

moved the application Ex. PV in the competent Court by alleging that he was of unsound mind and was incapable of making his defence. His mental state ought to be examined by a panel of experts at Psychiatry Department of PGIMS Rohtak. The said application was moved on 23.01.2009 and the notice was issued by the learned Court. However, surprisingly, his counsel made a statement Ex.PV/3 on 27.01.2009 and the said application was withdrawn by his counsel just after 03 days and the order passed by learned Judicial Magistrate 1st Class in this regard was Ex.PV/4. Apart from that, in his statement under Section 313 Cr.P.C., which has been reproduced above, the accused had set up a false plea that he was not present at the place of occurrence and rather he was away from the home. Even, a detailed statement made by the accused with regard to plea of *alibi*, while making a statement under Section 313 Cr.P.C. However, the appellant could adduce any evidence to substantiate the said plea and as per the settled canons of law, the above-said false pleas raised by the appellant would serve as an additional link in the chain of circumstances proved by the prosecution.

It has been held by the Hon'ble Supreme Court in the matter of *Anthony D'Souza and others Vs. State of Karnataka* 2002 (4) RCR (Criminal) RCR 765 as follows:-

In Swapan Patra v. State of West Bengal, (1999) 9 SCC 242, this Court said that in a case of circumstantial evidence when the accused offers an explanation and

*that explanation is found not to be true then the same offers an additional link in the chain of circumstances to complete the chain. The same principle has been followed and reiterated in **State of Maharashtra v. Suresh**, 2000(1) CRC (CrL) 149 (SC); (2000) 1 SCC 471, where it has been said that a false answer offered by the accused when his attention was drawn to a circumstance, renders that circumstance capable of inculcating him. This Court further pointed out that in such a situation false answer can also be counted as providing a missing link for completing the chain. The aforesaid principle has been again followed and reiterated in **Kuldeep Singh & Ors. Vs. State of Rajasthan**, JT 2000 (5) SC 161; 2000 (3) RCR (CrL) 77 (SC).*

In the instant case, the prosecution led overwhelming evidence to prove the involvement of the present appellant in the most heinous crime of the murder of his own wife and two minor children. The learned senior counsel has referred to some minor discrepancies in the evidence of the prosecution, which are due to normal errors of observations, normal errors of memory, due to lapse of time or due to mental disposition, such as, shock and errors at the time of occurrence and these are bound to be there in the testimonies of honest and truthful witnesses. Here in the instant case, we have

marshaled the evidence led by the prosecution and found the same to be creditworthy. Even the chain of circumstances as recited above, coupled with the ratios laid down by this Court and the Hon'ble Supreme Court unerringly lead to one conclusion and that is the guilt of the accused. We find no force in the submissions made by the learned senior counsel for the appellant that the appellant is entitled to benefit of doubt.

It has been held by the Hon'ble Supreme Court in the matter of **State of Punjab Vs. Karnail Singh** 2004(1) RCR Criminal 156 as follows:-

*“Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. [See: **Gurbachan Singh v. Satpal Singh and Others, 1990 (1) RCR (Criminal) 279 (SC): AIR 1990 SC 209**]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See **State of U.P. v. Ashok Kumar Srivastava, 1992(3) RCR (Criminal) 63 (SC): AIR 1992 SC 840**]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common*

*sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See **Inder Singh and Another v. State Delhi Admn., (AIR 1978 SC 1091)**. Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in **Stirland v. Director of Public Prosecution (1944 AC (PC) 315)** quoted in *Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favorite other than truth. (See: **Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra, (1974 (1) SCR 489)**, **State of U.P. v. Krishna Gopal and Another (AIR 1988 SC 2154)** and **Gangadhar Behera and Ors. v. State of Orissa (2002 (7) Supreme 276)**"].**

In view of the observations made above, we find no merit in the instant appeal and upheld and affirm the impugned

judgment of conviction and order of sentence dated 08.01.2020
passed by the learned Sessions Judge, Gurugram.

Resultantly, the instant appeal stands dismissed.

All the pending miscellaneous applications, if any, are
disposed off, accordingly.

The case property, if any, may be dealt with in
accordance with law after the expiry of the period of limitation.

The accused shall be taken into custody forthwith, if on
bail in the instant case, to serve the remaining sentence.

The trial Court record be transmitted back.

(SURESHWAR THAKUR)
JUDGE

12.10. 2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No