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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: April 21, 2022

Decided on: June 03, 2022

+ CRL.A. 788/2019

CHETAN PRAKASH

.... Appellant

Through: Mr. Sulaiman Mohd. Khan and
Ms. Taiba Khan, Advocates
(DHCLSC).

v

STATE (GNCT OF DELHI)

....Respondent

Through: Mr. Ashish Dutta, APP for
State with Inspector Naresh
Kumar, SHO and S.I. Mohit,
P.S. Swaroop Nagar.

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CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

SUDHIR KUMAR JAIN, J

This judgment shall decide an Appeal under section 374(2) read with section 383 of the Code of Criminal Procedure, 1973 against the judgment dated 19.01.2019 and order on sentence dated 31.01.2019 passed by Court of ASJ-02, North District, Rohini courts, Delhi in State Case No. 57372/2016 arising out of FIR bearing No. 115/2013 under section 302 Indian Penal Code, 1860 registered at P.S Swaroop Nagar whereby the appellant was convicted for offence under section 302 IPC and accordingly sentenced.



1. Briefly stated relevant facts leading to filing of present charge sheet under section 302/392 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) are that PW1 Sunil Kumar along with his wife R and two children was residing at tenanted premise forming part of property bearing no. D-62, Gali No. 1, Near Durga Mandir, Swaroop Nagar (hereinafter referred to as “**the room**”). PW1 Sunil Kumar on 17.04.2013 at about 8:45 am left home to drop children at their school and thereafter went to his work place. PW4 Meenakshi on 17.04.2013 at about 10.30-11.00 am saw Chetan Prakash @ Vicky entering in the room. R did not go to respective school of son namely Piyush and daughter Tanisha to bring them back and therefore they were brought back to the room by PW5 Babita and PW11 Ritika but upon their return the room was found to be locked from outside. PW5 Babita and PW6 Ritika left the children with PW2 Preeti who at about 2:45 pm informed PW1 Sunil Kumar that his children were brought back from school but the room was found to be locked from outside. PW1 Sunil Kumar tried to contact his wife R on mobile but it was found to be switched off and the children were thereafter taken by the mother of PW1 Sunil Kumar. PW1 Sunil Kumar came back to his house at about 9:35 pm but the room was still found locked. PW1 Sunil Kumar opened the lock with another key where upon the dead body of wife 'R' (hereinafter referred to as “**the deceased**”) was found lying on the bed. The deceased apparently strangled and a *chunni* was found to be tied around her neck. PW1 Sunil Kumar also noticed that four pairs of *baliyan* (ear-rings), *pajeb* and mobile phone make Samsung were



missing from the room.

2. PW20 SI Naresh Kumar along with Ct. Rakesh on 17.04.2013 after receipt of DD No. 71B Ex. PW22/A regarding hanging of the wife of caller with fan at D-62, near Durga Mandir, Rama Property Dealer, Swaroop Nagar and theft of jewellery and other house hold articles, reached there. PW25 Inspector Dharampal also reached at the room where dead body of the deceased was lying on bed and a *chunni* was found tied around neck of the deceased. PW20 SI Naresh Kumar recorded statement Ex. PW1/A of PW1 Sunil Kumar (hereinafter referred to as “**the Complainant**”) and prepared *rukka* Ex. PW25/A and on basis of *rukka* Ex. PW25/A, FIR under section 302/392 IPC Ex. PW3/A was got registered. After registration of FIR, investigation was handed over to PW25 Inspector Dharampal (hereinafter referred as “**the Investigating Officer**”). The Investigating Officer seized bed sheet Ex. P5 on which dead body of the deceased was found to be lying and *chunni* Ex. P7 vide seizure memo Ex. PW1/C. The Investigating Officer during course of investigation recorded statement of PW4 Meenakshi and collected CDR (Certified copy of which is Ex. PW10/B) pertaining to mobile no. 7838435927 issued in name of the complainant wherein mobile bearing no. 8375860869 issued in the name of Raj Kumari was found to be mentioned which on inquiry was found to be used by Chetan Parkash @ Vicky, son of maternal uncle of the complainant. Chetan Parkash @ Vicky during interrogation admitted to strangle the deceased on 17.04.2013 and removed her jewellery articles and also having illicit relations with the deceased. Chetan Parkash @ Vicky



was arrested (hereinafter referred to as “**the appellant/convict**”) and made disclosure statement Ex. PW19/C. The appellant/convict in pursuance of disclosure statement Ex. PW19/C got recovered black colour bag Ex. P8 from his house which was found to be containing one black coloured mobile phone make Samsung Ex. P4, one plastic box containing a pair of *pajeb* (anklet) Ex. P1, three pairs of ear rings Ex. P2, one pair of golden coloured tops Ex. P3 and said bag along with articles was seized vide seizure memo Ex. PW19/E. The appellant/convict vide proceedings Ex. PW18/Refused to participate in Test Identification Parade (TIP) despite warning of adverse inference. The complainant during TIP of articles stated to be recovered at the instance of the appellant/convict also identified those articles vide proceedings Ex. PW1/B. PW4 Meenakshi also identified the appellant/convict as the person who on 17.04.2013 was going towards the room of the deceased. PW21 Dr. Sudesh Kumar who conducted post mortem on dead body of the deceased opined cause of death as Asphyxia as a result of constriction of neck due to strangulation by ligature material consequent upon neck can be possible by soft flexible material. All injuries i.e. ligature mark and internal injuries were opined to be ante-mortem. The Investigating Officer after conclusion of investigation filed charge sheet under sections 302/392 IPC before the court of concerned Metropolitan Magistrate who took the cognizance vide order dated 18.07.2013.

3. The court of the Additional Sessions Judge/Special Judge (NDPS), North District, Rohini Courts vide order dated 12.09.2013 ordered to frame charges for offence under section 302 IPC and under sections



392/411 IPC to which the appellant/convict pleaded not guilty and claimed trial. The prosecution to prove guilt of the appellant/convict examined 25 witnesses including the complainant PW1 Sunil Kumar, PW4 Meenakshi, recovery witness PW19 SI Govind, PW20 SI Naresh Kumar who recorded statement of the complainant PW1 Sunil Kumar, PW21 Dr. Sudesh Kumar who conducted post mortem on dead body of the deceased and Investigating Officers PW25 Inspector Dharampal. The prosecution also proved necessary documents which were prepared during course of the investigation. The appellant/convict was also identified by the relevant witness including the complainant PW1 Sunil Kumar and PW4 Meenakshi. The statement of the appellant/convict was recorded under section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **“the Code”**) wherein the appellant/convict pleaded innocence and false implication. The appellant/convict denied factum of recovery of exhibits/case properties at his instance in pursuance of disclosure statement Ex. PW19/A. The appellant/convict preferred not to lead defence evidence.

4. The court of Additional Sessions Judge-02, North District, Rohini (hereinafter referred to as **“the trial court”**) vide judgment dated 19th January, 2019 (hereinafter referred to as **“the impugned judgment”**) after considering and analysing prosecution evidence convicted the appellant/convict for offence punishable under section 302 IPC and vide order on sentence dated 31st January, 2019 sentenced the appellant/convict to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- in default SI for six months for offence



punishable under section 302 IPC. The appellant/convict was acquitted for offence punishable under section 392/411 IPC. Benefit of section 428 of the Code was also extended to the appellant/convict.

5. The appellant/convict being aggrieved challenged the impugned judgment on grounds that the impugned judgment is unsustainable in law and has been passed without application of judicial mind; the prosecution has miserably failed to prove its case and the conviction cannot be sustained; there is major discrepancy in the time related to various incidents as detailed in grounds of Appeal; PW4 Meenakshi had deposed falsely; refusal of the appellant/convict to participate in the TIP proceedings cannot be read against him in evidence; there was no independent witness of any recovery of the case property from the appellant/convict which was falsely planted on the appellant/convict; there are major contradiction in respective testimony of the police officials; the scientific evidences did not support case of the prosecution besides other grounds. It was prayed that the impugned judgment and order on sentence dated 31.01.2019 be set aside. Alternatively, it was also prayed that on humanitarian view the appellant/convict may be sentenced for the period which has already been already undergone by the appellant/convict.

6. The perusal of the impugned judgment reflects that the trial court observed that there was no direct evidence and the prosecution has relied upon circumstantial evidence. The trial court also observed in impugned judgment that the prosecution relied upon following circumstances in support of its case: -



- a. That the accused was related to the husband of the deceased, who was residing along with her husband and children at D-62, Swaroop Nagar on rent.
- b. That PW1 used to drop his children to the school at 8:00 am and would leave the house for job at 8:45am which he did on 17.04.2013, at 2:45 pm on the same day, his neighbour PW2 Preeti informed him that his children had not come from school and his house was lying locked.
- c. That the accused had illicit relations with the deceased.
- d. That the accused had telephonic conversation with deceased on 16.04.2013 from his mobile phone to the mobile phone of the deceased.
- e. That the accused on 17.04.2013 in morning went to the house of deceased after talking to her on mobile.
- f. That on 17.04.2013, accused came to the house in which she was residing and went to the room of deceased at around 10:30 -11:00 AM.
- g. That the accused had strangled her with her *chunni* and also robbed ear rings / ear bangles and mobile phone. Thereafter, left after locking the door from outside.
- h. That the husband of deceased returned at 9:30 pm, opened the house with duplicate key, switched on light and saw his wife lying on the bed, with *chunni* around his neck. Three pairs of bangles, one pair of top sand one pair of pajeb were missing from her person. One mobile no. 7838435927 Samsung was also missing, which was being used by his wife.
- i. That the accused pursuant to his disclosure statement, got recovered the stolen articles belonging to deceased from his house, which is admissible u/S. 27 of Evidence Act.

7. The trial court in respect of the circumstances (a) and (b) after considering and relying on the testimonies of the complainant PW1



Sunil Kumar, PW7 Prem Singh who was landlord of the house bearing no D-62/1 Swaroop Nagar, PW2 Preeti, PW5 Babita and PW11 Ritika held that the prosecution could prove circumstances (a) and (b) beyond any shadow of doubt.

8. The trial court in respect of the circumstance (c) held that the prosecution could not prove alleged illicit relation between the appellant/convict and the deceased by observing that no legally admissible evidence led by the prosecution to prove this except the disclosure statement Ex. PW19/C which is not admissible in evidence as per section 25 of the Evidence Act, 1872.

9. The trial court in respect to the circumstances (f) observed that the prosecution could prove that on 17.04.2013 at around 10:30-11:00 am the appellant/convict came to the room of the deceased after primarily relying on testimony of PW4 Meenakshi who deposed that on 17.04.2013 at about 10:30 - 11:00 am, the appellant/convict came and entered into the room of the deceased as at that she (PW4 Meenakshi) was washing clothes outside her room. PW4 Meenakshi also correctly identified the appellant/convict as the person who came and entered into the room of the deceased. PW4 Meenakshi in cross-examination also clarified that she had seen the appellant/convict while she was washing the clothes outside the bathroom and her face was towards the main gate when she was washing the clothes. The trial court also observed that testimony of PW4 Meenakshi was also supported by site plan Ex. PW15/A and further observed that PW4 Meenakshi had full opportunity to see the facial and identity features of the appellant/convict and there was no reason for PW4 Meenakshi



to depose against the appellant/convict who also refused to participate in TIP despite warning.

10. The trial court observed that the prosecution has proved circumstance (h) i.e. the complainant PW1 Sunil Kumar came back at about 9:30 pm and after opening the room with duplicate key found that the deceased was lying on the bed and a *chunni* was tied around his neck. The complainant also noticed that three pairs of ear rings, one pair of tops and one pair of *pajeb* (anklet) were missing besides mobile bearing no. 7838435927 make Samsung being used by the deceased. The trial court relied on the testimony of the complainant PW1 Sunil Kumar who deposed that at about 9:30 pm he came back and found room was locked and opened the room with a duplicate key. The complainant PW1 Sunil Kumar found the deceased was lying on the bed and a *chunni* was tied around her neck. The complainant PW1 Sunil Kumar also found that few jewellery items one mobile bearing no. 7838435927 make Samsung used by the deceased were missing. The complainant PW1 Sunil Kumar also identified one pair of *pajeb*, three pair of ear tops and one pair of tops as Ex. P1, P2 & P3 and the mobile phone make Samsung as Ex. P4 during the TIP conducted vide proceedings Ex. PW1/B. The defence could not shake credibility of testimony of the complainant PW1 Sunil Kumar.

11. The trial court in respect of circumstances (d) and (e) observed that the appellant/convict had telephonic conversation with the deceased on 17.04.2013 from his mobile to the mobile of the deceased and the appellant/convict in morning of 17.04.2013 went to



the house (room) of the deceased after talking to her on mobile and relied on testimony of PW10 Israr Babu, Alternate Nodal Officer, Vodafone Mobile Phone Services Ltd. who brought Customer Information Form pertaining to mobile bearing no. 7838435927 issued in the name of the complainant PW1 Sunil Kumar and proved CDR as Ex. PW10/D. PW10 Israr Babu also brought the Customer Information Form pertaining to mobile bearing no 8375860869 issued in the name of Raj Kumari who is mother of the appellant/convict and proved CDR as Ex. PW10/F. PW10 Israr Babu also brought customer Application Form pertaining to mobile bearing no. 8586930124 issued in the name of Diwan Sahib Fashions Pvt. Ltd. as Ex. PW10/H and Cell ID chart as Ex. PW10/M. The trial court observed that as per testimony of the complainant PW1 Sunil Kumar mobile bearing no 7838435927 was being used by the deceased and the complainant PW1 was using mobile bearing no 8586930124 given by his employer. The trial court also observed that mobile bearing no. 8375860869 issued in the name of mother of the appellant/convict was recovered from possession of the appellant/convict as reflected from personal search memo Ex. PW19/B and believed that said mobile was being used by the appellant/convict. The trial court also observed that CDR Ex. PW10/F pertaining to the mobile bearing no. 8375860869 reflects that on 17.04.2013 i.e. on the date of the incident a call was made from the said mobile to the mobile bearing no 7838435927 at 9:45 am being used by the deceased and said call was lasted for 91 seconds. CDR of the mobile being used by the deceased also reflects



same pattern and further both Cell ID locations were overlapping with each other leading to inference that both the appellant/convict and deceased were in contact and in close proximity with each other. The trial court believed that long conversation of 91 seconds between the appellant/convict and the deceased established that the appellant/convict went to the house of the deceased and was also seen by PW4 Meenakshi. The trial court held that on 17.04.2013 the appellant/convict had mobile conversation with the deceased and thereafter went to the house of the deceased.

12. The trial court held the prosecution proved the circumstance (g) i.e. the appellant/convict had strangled the deceased with *chunni* and after robbing ear rings and mobile phone left the room after locking the door from outside. The trial court observed that the prosecution proved that the appellant/convict had gone to the room of the deceased on 17.04.2013 at around 10:30 - 11:00 am after making a telephonic call to the deceased at about 9:45 am. The testimony of PW4 Meenakshi also established that the appellant/convict went to the room of the deceased on 17.04.2013 at about 10:30 - 11:00 am. PW2 Preeti also noticed that room of the deceased was looked and informed about this to the complainant PW1 Sunil Kumar at about 3:30 pm when his children returned back from the school and found the room was locked. The testimony of the complainant PW1 Sunil Kumar also established that he had left for work at around 8:45 am and came back late in evening. The complainant PW1 Sunil Kumar was not seen by any of the person of the locality including PW4 Meenakshi and further cell ID location of official mobile provided to



PW1 by employer was also different from place of the incident and these facts combined together ruled out involvement of the complainant PW1 Sunil Kumar in the incident. The trial court further observed that post mortem report Ex. PW21/A also supports the prosecution which proved Asphyxia as cause of death caused by constriction of neck due to strangulation by ligature material. The post mortem report Ex. PW21/A also reflects that the post mortem of the deceased was conducted on 18.04.2013 at about 3:35 pm and the time since death was approximately 25 hours. The trial court further observed that as per post mortem report Ex. PW21/A approximate time of death came around 2:30 pm on 17.04. 2013. The trial court with support of testimony of PW4 Meenakshi observed that the appellant/convict came on 17.04.2012 at about 10:30 - 11:00 am into the room of the deceased and possibly remained in the company of the deceased till 2:00 - 2:30 pm. The trial court held that above mentioned facts lead to irresistible conclusion that the appellant/convict could have strangled the deceased and there is no evidence to establish that anybody else could have enter or left the room of the deceased. The recovery of the articles worn / possessed by the deceased and mobile phone were also recovered at the instance of the appellant/convict. The trial court held that the prosecution has proved beyond reasonable doubt that the appellant/convict has strangled the deceased.

13. The trial court in respect of circumstance (i) that the appellant/convict accused got recovered the stolen articles belonging to deceased from his house pursuant to disclosure statement



Ex.PW19/C and said recoveries are admissible under section 27 of the Evidence Act, 1872 relied on respective testimony of the Investigating Officer PW25 Inspector Dharampal, PW20 SI Naresh, and PW19 SI Govind. The Investigating Officer PW25 Inspector Dharampal deposed that the appellant/convict in pursuance of disclosure statement Ex. PW19/C led to his residential house bearing no 16/701, E- Ganesh Gali, Tank Road, Karol Bagh, Delhi and got recovered one black colour bag which was found containing one folded pant and shirt and in between said clothes, one mobile phone make Samsung, one plastic box containing a pair of silver *pajeb*, three pairs of ear rings, one pair of tops and a register which taken into possession vide seizure memo Ex. PW19/E. The testimony of the Investigating Officer PW25 Inspector Dharampal is corroborated by the testimonies of PW19 SI Govind and PW20 SI Naresh Kumar. The complainant PW1 Sunil Kumar also identified above articles recovered at instance of the appellant/convict in TIP vide Ex. PW1/B conducted on 07.05.2013 by PW18 Sh. Manish Khurana, then Metropolitan Magistrate. The trial after analysing prosecution evidence held that recoveries affected at instance of the appellant/convict pursuant to the disclosure statement Ex.PW19/C are admissible under section 27 of the Evidence Act, 1872. The trial court also encountered argument advanced by the defence counsel that no independent witness was included in the recovery proceedings by relying on **Sanjay alias Kaka V State of NCT of Delhi**, AIR 2001SC 979 wherein it was held that if no independent witnesses were associated with recovery (discovery) under S. 27 Evidence



Act, 1872 is not sufficient to create doubt regarding truth of prosecution version. The trial court held that the prosecution has been able to prove the circumstance (i) beyond any shadow of doubt.

14. The trial court ultimately held that circumstantial evidences established by the prosecution unerringly pointed towards the guilt of the appellant/convict and cumulatively established and supported the hypothesis that it was the appellant/convict had committed murder of the deceased by strangulation. The trial court did not accept defence version being not supported by evidence.

15. Sh. Sulaiman Mohd Khan, Advocate/DHCLSC advanced arguments and also submitted written arguments on behalf the appellant/convict. Sh. Ashish Dutta, Additional Public Prosecutor advanced arguments and also submitted written arguments on behalf of State.

16. The counsel for the appellant/convict argued that the complainant PW-1 Sunil Kumar received a call at about 2:30-03:00 pm that the deceased is not at home but the complainant PW-1 Sunil Kumar did not try to come back to the room and the said conduct of the appellant/convict was quite unnatural and leading to the inference that he was involved in commission of the offence. He further argued that the post mortem on the dead body of the deceased was conducted on 18.04.2013 at about 03:35PM and the time since death was mentioned about 25 hours which comes to 02:30 pm on 17.04.2013. As per the testimony of PW-4 Ms. Meenakshi, the appellant/ convict left the room at about 11:00 am on 17.04.2013 which reflects that the appellant/convict was not involved in commission of the offence. He



further argues that the extra key by which the complaint PW-1 Sunil Kumar opens the room was not recovered, which raises serious doubt as per the prosecution case; the appellant/convict was falsely implicated by the complainant PW-1 Sunil Kumar in connivance with the local police and the case property was planted on the complainant PW-1 Sunil Kumar. The counsel for appellant/convict PW-1 Sunil Kumar also referred FSL report and argued that the FSL report does not support the case of the prosecution. In the light of the above arguments the counsel for the appellant/convict argues that the appeal be accepted and the appellant/convict be acquitted.

17. The Additional Public Prosecutor argued that as per the testimony of PW-4 Meenakshi, the appellant/convict was seen entering into the room of the deceased at about 10:30AM/11:00AM and as such the prosecution has proved the last seen evidence, the evidentially value of which is substantiated by various judgments delivered by the various high courts. The Additional Pubic Prosecutor referred the Post mortem report Ex-PW-12/8 and testimonies of PW-9 Mr.Pawan Singh and PW-10 Ishrar Babu.

18. The offenders execute their plan under the cover of darkness or secrecy and do not leave any trail of evidence behind. In present case there is no eye witness to the incident and as such the prosecution case is resting on circumstantial evidences. In such cases main event has to be recreated before the court by leading surrounding circumstances. Circumstantial evidence or indirect evidence is an unrelated chain of events which when combined together formulates circumstances leading to the commission of the crime. Conviction



based on circumstantial evidence requires an unbreakable link between the criminal and the crime devoid of conjecture or suspicion. The chain of circumstances must rule out reasonable likelihood of the innocence of the accused. If circumstantial evidence establishes the chain of events leading to the guilt of the accused and commission of the crime without other possibilities, can be sole basis for a conviction. The circumstances should indicate towards the guilt of the accused and should be inconsistent with his innocence. The onus is on the prosecution to prove that the chain of circumstantial evidences is complete without gaps to the extent that no other conclusion or inference apart from the guilt of the accused can be drawn.

19. The Supreme Court in **Sharad Birdhichand Sarda V State of Maharashtra**, AIR 1984 SC 1622, while dealing with circumstantial evidence held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence must be fully established and said conditions precedent are:-

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established;**
- (ii) 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;**
- (iii) the circumstances should be of a conclusive nature and tendency;**
- (iv) they should exclude every possible hypothesis except**



the one to be proved; and

(v) 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.

20. The Supreme Court in **State of UP V Satish**, (2005) 3 SCC 114 and **Pawan V State of Uttaranchal**, (2009) 15 SCC 259 reiterated similar view. In **Ashok Kumar V State of Madhya Pradesh**, AIR 1989 SC 1890 the Supreme Court held that for circumstantial evidence to sustain conviction, the chain of events should be complete and should establish the guilt of the accused without probability of any other alternative. The evidence should be cogently and firmly established. In the case of **Bodh Raj V State of Jammu & Kashmir**, AIR 2002 SC 316 the Supreme Court held that that for a conviction to be solely based on circumstantial evidence following conditions are required to be met:-

- i. Circumstances from which guilt is established are required to be proved and impenetrable
- ii. Circumstances should be conclusive in nature and should form a link between the criminal and commission of the offence
- iii. Circumstances should retain moral certainty and there should be no scope for any other hypothesis.
- iv. All other hypothesis should be excluded except that one that is required to be proved

21. In **Krishnan V State represented by Inspector of Police**, (2008) 15 SCC 430 the Supreme Court after considering earlier judgments observed as follows:-



- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;**
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;**
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with all human probability the crime was committed by the accused and none else; and**
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.**

22. In Rajendra Pralhad Rao Wasnik V State of Maharashtra, (2012) 4 SCC 37 while dealing with the case based on circumstantial evidence, the Supreme Court observed as under: -

There is no doubt that it is not a case of direct evidence but the conviction of the Accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e. the guilt of the Accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the Accused and the only possibility is that the Accused has committed the crime.

23. In Ram Lal V State of Himachal Pradesh, Criminal Appeal No



576 of 2010 decided on 03rd October, 2018 the Supreme Court observed as under:-

(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 Sahab Rao Bobade & Anr. Vs. State of Maharashtra [(1973) 2 SCC 793]** where the observations were made:

"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."

24. It has further been considered by the Supreme Court in **Sujit Biswas V State of Assam, 2013(12) SCC 406** and **Raja alias Rajinder V State of Haryana, 2015(11) SCC 43** that while scrutinizing the circumstantial evidence, a Court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The



underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straight jacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.

25. The prosecution primarily relied on testimony of PW4 Meenakshi. A witness in a criminal trial plays a pivotal role in a determining truth of the case and an important constituent of the administration of justice as a witness has relevant information about commission of crime. The courts need witnesses to reach a verdict or decision. The witness by giving evidence linked to the offence performs a sacred duty of assisting the court to discover the truth. It is the salutary duty of every witness having knowledge of any fact related to commission of the crime to assist the State by giving evidence. The Supreme Court in **Mahender Chawla V Union Of India**, Writ Petition (Criminal) No. 156/2016 decided on 05th December, 2018 highlighted importance of witness in a trial and observed as under:-

Witnesses are important players in the judicial system, who help the judges in arriving at correct factual findings. The instrument of evidence is the medium through which facts, either disputed or required to be proved, are effectively conveyed to the courts. This evidence in the form of documentary and oral is given by the witnesses. A witness may be a partisan or interested witness, i.e., a witness who



is in a near relation with the victim of crime or is concerned with conviction of the accused person. Even his testimony is relevant, though, stricter scrutiny is required while adjudging the credence of such a victim. However, apart from these witnesses or the witnesses who may themselves be the victims, other witnesses may not have any personal interest in the outcome of a case. They still help the judicial system.

26. PW4 Meenakshi deposed that on 17.04.2013 she was washing clothes outside of her room and the appellant/convict entered into room of the deceased at about 10.30.-11.00am who was residing next to her room. PW4 Meenakshi was cross examined at length by the defence counsel. PW4 Meenakshi in cross examination denied suggestion that she was not able to see as to who was coming to room of the deceased or that she had not seen the appellant /convict on day of the incident. The testimony of PW4 Meebakshi is important and relevant to establish and proved that on 17.04.2013, the appellant/convict at about 10.30-11.00 am entered into the room of the deceased. There is no reason to disbelieve testimony of PW4 Meenakshi which is otherwise consistent, coherent and can be safely relied on. There is nothing in cross examination of PW4 Meenakshi which can dilute credibility of testimony of PW4 Meenakshi or that PW4 Meenakshi was having any ill will or motive against the appellant/convict. PW4 Meenakshi also identified the appellant/convict as the person who entered in the room of the deceased on 17.04.2012 at about 10.30-11.00 am. The testimony of PW4 is convincing and clearly established that the appellant/convict



was lastly in the company of the deceased. The testimony of the complainant PW1 Sunil Kumar proved that he had left the room at about 8.45 am and his children had already gone to their school. The combined testimonies of the complainant PW1 Sunil Kumar and PW4 Meenakshi are reflecting and proving that at about 10.30-11.00 AM on 17.04.2013 the appellant/convict came inside room of the deceased and at that time deceased was alone in the room. The trial court was rightly justified in relying on the testimony of PW4 Meenakshi.

27. It is also proved that mobile bearing no 7838435927 issued in the name of the complainant PW1 Sunil Kumar as reflected from Customer Information Form Ex.PW10/A and was used by the deceased.PW10 Israr Babu, Alternate Nodal Officer,Vodafone Mobile Phone Services Ltd. proved CDR in respect of mobile bearing no 7838435927 as Ex. PW10/D. PW10 Israr Babu, Alternate Nodal Officer,Vodafone Mobile Phone Services Ltd. proved Customer Information Form Ex. PW10/D pertaining to mobile bearing no 8375860869 issued in the name of Raj Kumari who is mother of the appellant/convict and proved CDR as Ex. PW10/F. The trial court rightly observed that CDR Ex. PW10/F pertaining to the mobile bearing no. 8375860869 proved that on 17.04.2013 a call was made from the said mobile to the mobile bearing no 7838435927 at 9:45 am being used by the deceased which lasted for 91 seconds and said fact is corroborated by CDR Ex.PW10/B pertaining to mobile being used by the deceased. CDR Ex. PW10/B and Ex. PW10/F also reflect that both Cell ID locations were overlapping with each other. It also



established beyond shadow of doubt that the appellant/convict and deceased were in contact on 17.04.2013 and the appellant/convict went to the house of the deceased and at that time was also seen by PW4 Meenakshi. The trial court rightly observed that prosecution has proved these facts.

28. The prosecution is also relying on another piece of evidence i.e. recovery of articles at instance of the appellant/convict in pursuance of disclosure statement Ex. 19/C. Section 27 of the Evidence Act, 1872 incorporates the theory of confirmation by subsequent facts i.e. statements made in police custody are admissible to the extent that they can be proved by subsequent discovery of facts. Section 27 of the Indian Evidence Act, 1872 reads as follows:

27. How much of information received from accused may be proved- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

29. The requirements of Section 27 of the Evidence Act, 1872 were succinctly summed up in **Anter Singh V State of Rajasthan**, (2004) 10 SCC 657 as under:-

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.



- (2) The fact must have been discovered.**
- (3) The discovery must have been in consequence of some information received from the accused and not by the own act of the accused.**
- (4) The person giving the information must be accused of any offence.**
- (5) He must be in the custody of a police officer.**
- (6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.**
- (7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved.**

30. The Supreme Court in **Raju Manjhi V State of Bihar**, Criminal Appeal No. 1333/2009 decided on 2nd August, 2018 held as under:-

It is true, no confession made by any person while he was in the custody of police shall be proved against him. But, the Indian Evidence Act, 1872 provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning the alleged offence, such statement can be proved against him.

31. The complainant PW1 Sunil Kumar deposed that on 17.04.2013 at about 9.30 PM he came back to room which was found lying locked and he opened lock of room by using a duplicate key. The complainant found the deceased was lying locked and three pairs of ear rings, one pair of tops and one pair of *pajeb* besides one mobile make Samsung bearing no 7838435927 were found missing. The



appellant/convict was arrested on 18.04.2013 by the Investigating Officer vide arrest and personal memos Ex. PW19/A and Ex. PW19/B. The appellant/convict also made disclosure statement Ex. PW19/C. The appellant/convict in pursuance of disclosure statement Ex. PW19/C led the Investigating Officer PW25 Inspector Dharampal, PW19 SI Govind and PW20 SI Naresh Kumar at his residence bearing no E-16/701, Ganesh Gali, Tank Road, Karol Bagh. The Investigating Officer PW25 Inspector Dharampal, PW19 SI Govind and PW20 SI Naresh Kumar in their respective testimony deposed that the appellant/convict produced one black bag kept at first floor and on checking one mobile make Samsung, one plastic box containing one pair of silver *pajeb* (anklet) and clothes were found and from right pocket of pant, three pairs of ear rings and one pair of ear tops wrapped in a piece of paper were recovered. The Investigating Officer PW25 Inspector Dharampal seized these articles vide seizure memo Ex. PW19/E after converting into *pull and as*. The Investigating Officer PW25 Inspector Dharampal, PW19 SI Govind and PW20 SI Naresh Kumar also identified mobile make Samsung as Ex. P-4, one pair of *pajeb* (anklet) as Ex. P-1, three pairs of ear rings as Ex. P-2 and one pair of tops as Ex. P-3. The respective testimony of the Investigating Officer PW25 Inspector Dharampal, PW19 SI Govind and PW20 SI Naresh Kumar are coherent, consistent, corroborating each other in material particulars and can be safely relied on. The combined reading of testimonies of the Investigating Officer PW25 Inspector Dharampal, PW19 SI Dharampal and PW20 SI Naresk Kumar proved factum of recoveries of articles Ex. P1-Ex.



P4 at instance of the appellant/convict.

32. The prosecution to prove that articles Ex. P1 to Ex. P4 belonged to the deceased relied on testimony of the complainant PW1 Sunil Kumar who participated in Test Identification Parade of articles Ex. P1 to Ex. P4 which was conducted by PW18 Manish Khurana, then Metropolitan Magistrate on 07.05.2013 and identified articles Ex.P1-Ex.P4. The complainant PW1 Sunil Kumar deposed that on 07.05.2013 he came to Rohini Court for identification of recovered articles and identified these articles as worn by the deceased. The complainant PW1 Sunil Kumar also identified his signatures on proceedings Ex.PW1/B.

33. The prosecution to support testimony of the complainant PW1 Sunil Kumar also examined PW18 Manish Khurana, then Metropolitan Magistrate who conducted Test Identification Parade (TIP) of articles Ex. P1-Ex. P4. PW18 Manish Khurana deposed that on 07.05.2013 he conducted TIP of three pairs of ear rings, one pair of tops and one pair of silver anklet (*pajeb*) vide proceedings Ex. PW1/B which were properly and correctly identified by the complainant PW1 Sunil Kumar. The complainant PW1 Sunil Kumar also identified mobile make Samsung as Ex. P-4, one pair of *pajeb* (anklet) as Ex.P-1, three pairs of ear rings as Ex.P-2 and one pair of tops as Ex. P-3.

34. The combined testimonies of PWs as referred hereinabove proved that mobile make Samsung Ex. P-4, one pair of *pajeb* (anklet) Ex. P-1, three pairs of ear rings Ex.P-2 and one pair of tops Ex. P-3 which used to be worn by the deceased were recovered at instance of the



appellant/convict and were correctly identified by the complainant PW1 Sunil Kumar. The trial court rightly held that articles Ex. P1 to Ex.P4 were recovered at instance of the appellant/convict.

35. The counsel for the appellant/convict argued that the complainant PW-1 Sunil Kumar received a call at about 2.20-3.00pm that the deceased is not at home but the complainant PW-1 Sunil Kumar did not try to return back to the room and the said conduct of the complainant PW-1, Sunil Kumar is highly unnatural and is indicating towards the involvement of the complaint PW1 Sunil Kumar in commission of the offence. The complainant PW-1 Sunil Kumar deposed that he dropped his children in the school at about 8 am and left the room for job at Karol Bagh Diwan Saheb at about 8.45 am for his job. The complainant PW-1 at about 2.45 received a call on his mobile from PW-2 Preeti that the children had come from school but the room was lying locked. The complainant PW-1 Sunil Kumar told PW-2 Preeti that the deceased might have gone to the market and she would return and thereafter the complainant PW-1 Sunil Kumar returned back to the room at about 9.30 PM. The complainant PW-1 Sunil Kumar in cross-examination deposed that he called his mother from 2.45 pm to 9.30 pm to find out the whereabouts of the deceased who informed that the children are with her but she is not aware of the whereabouts of the deceased. PW-2 Preeti, deposed that on 17.04.2013, children of the deceased were brought back by PW-5 Babita and PW-11 Ritika but the room was lying locked and as such he made a call to the complainant PW-1 Sunil Kumar at about 3.30pm to inform that the children had come to the room which was



lying locked. The complainant PW-1 Sunil Kumar informed PW-2 Preeti that his mother would come and take the children. Thereafter, mother of the complainant PW-1 Sunil Kumar came and took the children to her home. PW-5 Babita and PW-11 Ritika who were employees of the respective school of the children of complainant PW-1 Sunil Kumar also deposed that they left the children with PW-2 Preeti. The combined testimony of the complainant PW-1 Sunil Kumar PW-2 Preeti PW-5 Babita and PW-11 Ritika prove that on 17.04.2013, the complainant PW-1 Sunil Kumar left the room at about 8.45am after dropping his children to the school and the children were brought back from their respective school by PW-5 Babita and PW-12 Babita at the room which was found to be locked and thereafter the children were dropped at the house of PW-2 Preeti from where Mother of the complainant PW-1 Sunil Kumar took them to her house. The complainant PW-1 Sunil Kumar came back at the room at about 9.30 and found that the room was lying locked. It is also apparent that the complainant PW-1 Sunil Kumar also informed his mother to take the children from the room as the deceased was not there. The complainant PW-1 Sunil Kumar has done every possible act for the safety of his children by informing his mother. There was nothing unnatural in the conduct of the complainant PW-1 Sunil Kumari did not come back to the room after receiving call from PW2Preeti at about 3:30 pm. The trial court has rightly and correctly appreciated prosecution evidence to rule out presence of the appellant/convict at room at the time of commission of offence. The argument advanced by the defence counsel is without any force and



not acceptable.

36. The defence counsel further argued that as per the testimony of the complainant PW-1 Sunil Kumar he came back at about 9.30 pm and found the room was lying locked and thereafter he opened the lock of the room by using a duplicate key and the said duplicate key was not recovered during investigation which is raising serious doubt as to the prosecution story. The complainant PW-1 Sunil Kumar in cross-examination deposed that there were two keys to the lock of his room and out of which one key was with him by which he opened the door in the night of 17.04.2019 and the other key used to remain with the deceased. The testimony of complainant PW-1 Sunil Kumar reflects that there were two keys of the room out of which the complainant PW-1 Sunil Kumar used to keep one key and another key used to remain with the deceased. If the investigating officer did not seize the additional key from the possession of the complainant PW-1 Sunil Kumar it is not fatal to the case of the prosecution. The above argument of the defence counsel is without any force.

37. The defence counsel also referred a statement of the accused under Section 313 of the Code. Statement under Section 313 of the Code is not a substantive piece of evidence. It is not equivalent to confession of accused. Section 313 of the Code ensures principle of natural justice to the accused. It empowers the court to examine the accused with the purpose to enable the accused to explain incriminating circumstances in the prosecution evidence. The Supreme Court in **Reena Hazarika V State of Assam**, Criminal



Appeal No. 1330/2018 decided on 31st October, 2018 observed that a solemn duty is cast on the court in the dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing. It was also held that Section 313 Cr.P.C. cannot be seen simply as a part of *audi alteram partem* rather it confers a valuable right upon an accused to establish his innocence. It also made it explicitly clear that if there has been no consideration of the defence taken by the accused under section 313 Cr.P.C. the conviction can stand vitiated.

38. The appellant/convict in statement under section 313 of the Code pleaded innocence and false implication by the complainant PW-1 Sunil Kumar in connivance with the police. However, the said defence taken by the appellant/ convict is appearing to be false, sham and without any basis in the absence of any corroborating evidence particularly when the appellant/convict has preferred not to lead defence evidence.

39. The defence counsel also argued that the post mortem on the dead body of the deceased was conducted on 18.04.2013 at about 3.30 pm and the time since death was opined to be 25 hours which reflects that the deceased died at around 2.30 pm on 17.04.2013 which is contrary to the testimony of PW-4 Meenakshi who allegedly saw the appellant/convict at about 10.30-11.00am while entering into the room of the deceased. The trial Court after analysing and evaluating evidence rightly observed that the appellant/convict might have



remained in the company of deceased till 2-2.30 pm and there is no reason to disagree with the said finding of the trial court.

40. The defence counsel also referred FSL Report in respect of chance finger prints lifted from glass. It is apparent that the crime team led by PW-12 S.I Ramesh Chand was called at the scene of the crime and the Ct. Anil lifted the chance fingerprints. PW-12 SI Ramesh Chand in cross examination deposed that finger prints were lifted in his presence from mirror affixed with the door of the almira and fingerprints were not lifted from any other place. PW 23 Inspector NK Sharma, examined chance prints and specimen finger and palm prints of the appellant/convict and found that three chance prints marked Q-1 and Q 3 were not identical with the finger/palm prints of the appellant/convict and chance print marked Q-2 was found unfit for comparison. PW23 Inspector also submitted the Report Ex-PW23/A. The defence counsel argued that the Report Ex PW 23/A is raising serious doubts as to the persecution case. It is correct that the chance print lifted from the spot did not match with the specimen finger/palm prints of the appellant/convict and this does not dilute the prosecution story when their other convincing evidence led by the prosecution leading towards guilt of the appellant/convict.

41. The appellant/convict in grounds of appeal mentioned that the trial court failed to appreciate contradictions in the testimony of police officials which clearly reflect that the appellant/convict was called in the police station and thereafter was falsely implicated. It was pointed out that PW19 SI Govind deposed that the appellant/convict was not called but was produced by the



complainant/convict in police station while the Investigating Officer PW25 Inspector Dharampal deposed that the appellant/convict was called at police station through the complainant PW1 Sunil Kumar. In criminal trial every contradiction, discrepancy or improvement is not fatal for prosecution. It is only major contradiction, discrepancy or improvement on material facts shaking very genesis of prosecution case which matters for creating doubt on prosecution case. The Supreme Court in **Thoti Manohar V State of A.P**, Criminal Appeal No 1739 of 2007 decided on 15th May, 2012 observed that the minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution. Giving undue importance to them would amount to adopting a hyper-technical approach. The Court while appreciating the evidence should not attach much significance to minor discrepancies, for the discrepancies which do not shake the basic version of the prosecution case are to be ignored. The contradiction as pointed out in respective testimony of PW19 SI Govind and the Investigating Officer PW25 Inspector Dharampal are minor variation in nature and not sufficient to shake credibility of prosecution version.

42. Every person accused of an offence is always presumed to be innocent so that burden lies upon the prosecution to establish beyond reasonable doubt and all ingredients of the offence with which the accused is charged are made out. The prosecution has successfully chain of events by leading appropriate evidences which combined together is formulating circumstances leading to the commission of the crime and ruling out reasonable likelihood of the innocence of the



accused. The quality and quantity of evidence led by the prosecution is leading to the guilt of the appellant/convict and commission of the crime without other possibilities. The impugned judgment is reasoned and based on proper analysis of prosecution evidence and does not call for any interference.

43. The trial court vide order on sentence dated 31.01.2019 sentenced the appellant/convict to undergo rigorous imprisonment for life and he is also sentenced to pay a fine of Rs. 5,000/- under section 302 IPC and in default to undergo SI for six months. Benefit under section 428 of the Code was also extended to the appellant/convict. The trial court observed that the appellant/convict killed his own relative i.e. the deceased in brutal manner and as such in the appellant/convict is liable to severe punishment. The trial court also sent copy of impugned judgment and order on sentence to Secretary DSLSA, North, Rohini Courts, Delhi for awarding appropriate compensation to the family of the deceased.

44. Sentencing is an important task in the future prevention of crime. The one of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is executed. There is no straitjacket formula for sentencing an accused on proof of crime as India does not have structured sentencing guidelines being laid down by the legislature. The punishment for murder under IPC is life imprisonment or death and the person is also liable to a fine.



Guidance on the application of the death sentence was provided by the Supreme Court of India in **Jagmohan Singh V State of Uttar Pradesh**, (1973) 2 S.C.R. 541 wherein the Court enunciated an approach of balancing mitigating and aggravating factors of the crime when deciding on the imposition of capital punishment. In **Bachan Singh V State of Punjab**, (1980) 2 S.C.C. 684 wherein the Supreme Court emphasized that the court can impose the sentence of death only if there are special reasons for doing so. The Court also emphasized that due consideration should not only be given to the circumstances of the crime but to the criminal also. In **Bachan Singh** two aspects elaborated, firstly that the extreme penalty can be inflicted only in gravest cases of extreme culpability and secondly, in making the choice of sentence due regard must be paid to the circumstances of offender also.

45. The Supreme Court in **Sangeet & Another V State of Haryana**, (2013) 2 S.C.C. 452 noted that the primacy still seems to be given to the nature of the crime, and that the circumstances of the criminal. The Supreme Court in **Sangeet** concluded as follows:

1. This Court has not endorsed the approach of aggravating and mitigating circumstances in the 1971 case of Bachan Singh. However, this approach has been adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.
2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two.



The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.

3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.
4. The Constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.
5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.

46. The trial court after considering all relevant facts has awarded life imprisonment along with fine which does not call for any interference.

47. In view of above discussion, we are of opinion that present appeal being devoid of merits, is accordingly dismissed. All pending applications are also disposed of being infructuous.

48. A copy of this judgment be given to the counsel for the appellant/convict and be also uploaded on the website of this court expeditiously.

SIDDHARTH MRIDUL, J

SUDHIR KUMAR JAIN, J

MAY, 2022

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