

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-24-2023 (O&M)

Date of Decision: 20.08.2024

State of Haryana

....Appellant.

Versus

Juniad Alam @ Shivam @ Golu

...Respondent.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Argued by: Mr. Sukhdeep Parmar, Sr. DAG, Haryana.

Sukhvinder Kaur, J.

1. Appellant-State of Haryana has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 14.07.2022, passed by learned Additional Sessions Judge, Panchkula, vide which the respondent has been acquitted.

2. The factual scenario, as highlighted by the prosecution, is that on 07.01.2019 SI Jai Singh (*since expired during trial*) posted at Police Station Kalka received information about murder of Priest of Hanuman temple, situated at Parwanoo-Haryana Barrier, Kalka. He accompanied by other police officials, reached at the spot and found that all doors of Hanuman temple were open. In the kitchen, situated in the basement of the temple, dead body of a person was lying with injury marks on it. The blood was also lying scattered on the floor. He telephonically informed Incharge

of police station and also called the team for scanning the crime scene.

One Kamal Kumar met SI Jai Singh at the spot and got recorded his statement *Ex.PD*, stating therein that he was resident of near by Kali Mata temple, Kalka. In his neighbourhood, Prachin Mansa Puran Hanuman Mandir, Kalka is located at Parwanoo Toll Plaza, which is being looked after for the last 10-12 years by Shri Shyam Baba. He used to go to the said temple daily to pay obeisance. On 07.01.2019, as per his routine, when he reached the temple at about 07:30 A.M., he found all doors of the temple open. Baba was not there. He saw through the doors of the basement that Baba was lying in the kitchen with blood scattered around his head. He informed Darshan Giri, the Priest of Kali Mata Mandir, who further informed Som Nath, Municipal Councilor. They also came at the spot and from stairs of the basement, saw the same and then informed the police. He stated that some unknown person had caused death of Baba Shyam Nath by beating him.

On the aforesaid statement suffered by Kamal Kumar, SI Jai Singh recorded police proceedings *Ex.PAN* and sent EHC Jatinder Kumar to the police station, resulting in registration of formal FIR *Ex.PAO*. The spot was inspected by SI Jai Singh, who found blood lying on the floor of the kitchen, which was collected with the help of a cotton cloth. On and around dead body, seven pieces of glass bangles were found. A bucket full of water with a brick with the mark 'SBC' was lying immersed therein. The brick was broken from the corners and was stained with blood. Sample of the blood stained water was taken in a plastic bottle and all these recovered articles were converted into separate parcels and sealed at the spot. A DVR make HIKVISION made in China and a mouse (electronic) were also

recovered, which were also converted into a parcel, sealed and taken in police possession vide seizure memo *Ex.PE*.

Scene of Crime team headed by Ms. Riti Saini reached at the spot and noticed the physical evidence and gave necessary instructions. Finger prints were lifted by Ct. Bintu Ram. Photographs were clicked and spot inspection report was later on prepared by Ms. Riti Saini on 11.01.2019.

SI Jai Singh prepared Crime Detail Form *Ex.PAU* and rough site plan *Ex.PAU/1* and also recorded statements of Mohinder Singh Chaudhary and Hem Dutt Sharma under Section 175 Cr.P.C. Mahinder Singh Chaudhary stated that temple in question had been built by his father many years ago; and for the last 10-12 years, Baba Shyam Nath was looking after the temple as its priest. He also disclosed the mobile numbers which were being used by Baba Shyam Nath. He further stated that on getting information about the murder of Baba Shyam Nath he reached at the spot and identified the dead body of Baba Shyam Nath. Inquest report was prepared by SI Jai Singh.

Dead body was shifted to CHC, Kalka and postmortem examination was conducted by Dr. Dheeraj Kapoor and Dr. Cherry Gupta and Postmortem report *Ex.PJ* was prepared. After conducting the postmortem examination, the dead body, inquest papers, belongings of the deceased and sealed parcels were handed over to the Investigating Officer. As theft was found to have been committed at the spot, Section 380 IPC was also added.

On the basis of secret information, accused Junaid Alam @ Shivam @ Golu was joined in the investigation and was arrested vide arrest

memo *Ex.PV*. During interrogation, accused alleged committing of unnatural sex with him by deceased Baba. Accused was taken to CHC Kalka and he was medico-legally examined by Dr. Harish Garg who prepared his MLR *Ex.PU* and then referred the accused to Civil Hospital, Sector 6, Panchkula for Expert opinion.

On 10.01.2019, accused was interrogated by SI Jai Singh and he suffered disclosure statement *Ex.PY*, stating that he hailed from a village situated in District Lakhimpur Khiri, Uttar Pradesh and had come to Kalka about 3-4 months ago in search of job. He stayed with his friend Tilu for 4-5 days. Tilu left his job and went back to his village, whereas accused started doing job in a factory at Parwanoo and took a room on rent in Paniwala Parao Mohalla belonging to Sillu Pardhan. About 10-12 days ago, he came in contact with the priest of Hanuman temple, situated near the barrier, to whom he misrepresented his name as Shivam and his caste as Pandit while concealing his real identity. Baba believed him and permitted him to stay in the temple and to cook meals for him at night and to attend his duties as usual. Accused further disclosed that on 06.01.2019, he returned to the temple at about 05:00 P.M. Baba had told him that some persons would come at 08:00 – 09:00 P.M. with whom he would send him to Mumbai. At about 10/10.15 P.M. he went in the basement, where only Baba was present and on asking of Baba, he started cooking vegetable but after some time, altercation took place with Baba on the issue of preparing vegetable. Baba slapped him on face, due to which he got enraged and by picking a brick lying in the corner of the kitchen, he inflicted 2-3 injuries with brick on the head of Baba, who fell down on the floor of the kitchen and then he inflicted more injuries to Baba. Blood started oozing out and Baba became

unconscious. He put the brick in the bucket full of water lying in the kitchen. Then he picked glass bangles lying in the articles of Mata Rani and by breaking the same threw them on Baba to mislead the police, he also removed DVR and LED wires. Then he took the potli (tied in small cloth) containing currency notes and coins received in donations in the temple and put it in a bag and after taking scooty of Baba bearing registration No.HR-49E-3913 fled from the spot. With an intention to project it as a case of looting, he also took away the mobile phone of Baba. He disclosed that he had parked the scooty in the parking of Railway Station, Ambala and had concealed the stolen money and mobile phone with his friend Tilu at Village Mehmoodpur, District Lakhimpur Khiri, Uttar Pradesh. He also disclosed that he had concealed the clothes worn by him at the time of crime in the bushes near Muradabad Railway Station and nobody except him had any information in this regard.

On the same day i.e. 10.01.2019, Sushil Kumar, the landlord of the rented accommodation of the accused was joined in the investigation, who produced the rent deed dated 02.11.2018 Ex.PQ, which was taken into possession vide memo Ex.PR.

On 11.01.2019, while on the way to the place of concealment as stated by the accused, he retracted from his earlier statement. On further interrogation, he reiterated his earlier version regarding the manner in which he had inflicted injuries to the deceased Baba, but retracted from his statement regarding places of concealment of various articles. He disclosed that after noticing the CCTV camera in the room, he had removed the LED and set up box. On opening the iron Almirah, he found currency notes and coins, which he put in the bag. He also removed the DVR and the LED and

mobile phone from Baba's room and then came to the room on the upper level/ storey, where he found key of Baba's scooty. He fled from the spot on the said scooty and had parked it in Sukarmal Gali, Kalka, and could get it recovered. He further stated that money, mobile and key of the scooty, removed from the spot had been concealed by him in a red coloured bag which was lying in his rented room situated at Paniwala Parao Mohalla, Kalka, which he could get recovered. He stated that while committing the crime, his clothes and shoes were stained with blood. After committing the crime, he cut his shoes into pieces with a knife and put them in a polythene bag and had concealed the bag containing his bloodstained clothes in an empty plastic water tank on the roof of his rented room, alongwith polythene containing the pieces of his shoes. He further disclosed that during day time, he removed Rs.11,000/- from the bag and purchased a mobile phone marka OPPO from the Kalka market, in which he inserted his two old SIMs and then switched off that mobile and then alongwith mobile box and the bill put in the same bag and concealed it in the rented room. Said disclosure statement Ex.PC as recorded by SI Jai Singh was witnessed by Ct. Sayyad Khan.

On 12.01.2019, accused was taken by SI Jai Singh to Government Hospital, Sector 6, Panchkula, where application Ex.PK was moved before SMO seeking his opinion regarding allegation of accused qua unnatural sex by the deceased. Dr. Hardeep Singh gave his opinion regarding the same and another application Ex.PM was moved by SI Jai Singh before Medical Officer CHC Kalka seeking his opinion as to whether injuries mentioned in the PMR of the deceased could be caused with the brick recovered from the spot. The sealed parcel containing the brick was

also produced before the doctor. Dr. Dheeraj Kumar after opening the parcel and examining the brick contained therein gave his opinion Ex.PN.

Thereafter, as per his disclosure statement, accused led the police team to his rented House No.782-783, Paniwala Parao, Kalka and got recovered stolen bag lying in a corner of the room. On opening the bag, it was found to contain currency notes and coins lying in a potli. On counting, currency notes were found to be worth ₹965/- and coins worth ₹5895/-. Inventory of money Ex.PAA was prepared and coloured photocopies of currency notes Ex.PAB were also got prepared and were converted into a sealed parcel. Thereafter, mobile phone marka OPPO with three SIMs – 2 SIMs inserted in the mobile, alongwith mobile box and bill were found. The bill for Rs.10,990/- dated 07.01.2019 was issued by Balaji Communications, Kalka in the name of accused Alam. Said mobile phone, bill and box were also taken into possession after converting these into sealed parcel and another mobile of Grey-silver colour make OPPO inserted with two SIMs in switched off condition, was also found. On switching on the mobile, the SIMs were found to be being used by deceased Baba, which matched with the Call Detail Record. Said mobile was also taken into possession. One diary of deceased Shyam Baba and medical report of CHC Kalka were also recovered. Key of the stolen scooty of deceased Baba was also found. Aadhaar Card of accused Junaid Alam was also recovered. All these articles were put back in the bag and were sealed with the seal 'JS' and were taken into possession by SI Jai Singh vide memo Ex.PZ.

Then accused led the police to the roof of his rented room and from an empty plastic water tank, got recovered a bale which was found containing sky blue shirt, the arms and collar of which were stained with

blood; a blue coloured pant having bloodstains; a grey colour jacket, arms of which were stained with blood. All these clothes were converted into a sealed parcel and were taken in possession, vide memo Ex.PAC. Site plan of place of recovery Ex.PAR was prepared. Accused also got recovered a polythene bag from the same plastic water tank lying on the roof of his rented room and on opening the same, it was found to contain 31 pieces of grey coloured shoes which were also stained with blood. These were converted into a parcel and taken into possession vide memo Ex.PAD.

Accused then led the police party to Sukarmal gali Kalka, from where he got recovered scooty bearing registration No.,HR-49E3913. With the help of the key which was found in the bag recovered from the rented room of the accused, said scooty was started and then taken into possession vide memo Ex.PAE. Site plan of place of recovery Ex.PAT was prepared. The spot of crime was demarcated at the instance of the accused regarding which memo Ex.PAF was prepared and the recovery memo prepared by SI Jai Singh was witnessed by HC Pardeep Kumar and HC Rakesh Kumar.

During further investigation, scaled site plan Ex.PB of the spot of crime was got prepared. The sealed parcels containing case property were sent to FSL for necessary analysis. Statements of the witnesses under Section 161 Cr.P.C were recorded. After completing all the formalities of investigation, final report under section 173 Cr.P.C. was submitted in the Court of learned Area Magistrate, who complied with the provisions of Section 207 Cr.P.C. and committed the case to the Court of Sessions vide order dated 03.05.2019.

3. After finding a prima facie case against the accused, he was

charge-sheeted for the offences under Sections 302, 380 IPC and Section 201 IPC read with Section 302 IPC, to which he did not plead guilty and claimed trial.

4. As many as 19 witnesses were examined by the prosecution to prove its case. Statement of accused under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He claimed innocence and false implication. The accused did not lead any defence evidence. After considering the evidence on record, learned trial Court acquitted the accused of the offences for which he had been charge sheeted vide judgment dated 14.07.2022.

5. Aggrieved by the said decision, appellant- State of Haryana has preferred the present application for seeking leave to file an appeal against acquittal of the accused.

6. Learned counsel for the appellant has vehemently contended that there is ample circumstantial evidence on record for connecting the accused with the crime in the present case. He pointed out that on 07.01.2019, after getting information regarding the murder, when SI Jai Singh reached at the spot, he collected physical evidence including blood lying on the floor, some pieces of bangles, a bloodstained brick immersed in water and a DVR. He has further contended that after his arrest, accused suffered disclosure statement initially on 10.01.2019 and then on 11.01.2019, resulting into recovery of his bloodstained clothes and bloodstained pieces of shoes which were worn by him at the time of crime. As per FSL report Ex.PH, all the aforesaid articles which had been converted into sealed parcels and had been sent for analysis were found having human blood, blood group 'B' on most of the parcels, though on

some articles, the blood group could not be ascertained. As clothes of the deceased as well as clothes of the accused and pieces of his shoes had stains of human blood group 'B', it connects the accused with the crime. While referring to the other disclosure statement of the accused Ex.PC, he has contended that besides recovery of his bloodstained clothes and shoes, the accused also got recovered currency notes and coins, mobile and a diary of the deceased. The SIMs inserted in the recovered mobile was found to be that of deceased Baba Shyam Nath. The scooty of the deceased was also recovered at the behest of the accused. He has urged that CCTV footage retrieved from the DVR recovered from the spot was also produced on record by the prosecution, in which accused could be seen entering in the room of the temple along with the deceased and coming out of the room alone and moving out hurriedly. He has argued that during investigation, accused tried to set up the plea of commission of sodomy by the deceased, but on medical examination, no evidence could be found. He has further contended that learned trial Court erred in not appreciating the evidence brought on record by the prosecution in the right perspective. The trial Court has failed to appreciate the evidence regarding the disclosure statement and the recoveries got effected in pursuance of said disclosure statement Ex.PC. He has vehemently contended that trial Court has failed to appreciate the evidence qua CCTV footage and wrongly held that same was not proved as per law, whereas the hard disk in which the retrieved data was converted from the original DVR was produced in the Court as Ex.PAX in sealed condition and hard disk was also played in the Court where the accused was seen entering the room in the temple premises and in other clip he was found entering the room in temple along with deceased and was

found coming outside the room alone and moving out hurriedly. He has contended that the forwarding letter sent by CFSL Ex.PAX/1 clearly proved that the CCTV footage data retrieved from DVR/1 was being provided in one hard disk in sealed condition and also submitted that the CFSL report Ex.PAW was *per se* admissible, which proved that the retrieved data from DVR and the CCTV footages of 06.01.2019 was being provided in the hard disk. He has submitted that the aforesaid report proved the presence of accused with deceased on 06.01.2019 and on the next morning the dead body of deceased was found with multiple injuries, which leads to the inference that the said crime had been committed by the accused. He has also argued that the Investigating Officer of the case could not be examined as he unfortunately expired during the trial. But the other witnesses who remained associated with the Investigating Officer, PW14-HC Rakesh Kumar, PW18-HC Pardeep Kumar remained consistent in their statements, which has not been correctly appreciated by learned trial Court. He has contended that the trial Court has failed to appreciate that as per postmortem report Ex.PJ, nine injuries were found on the person of deceased and has wrongly assumed the timing of death of accused, whereas as per postmortem report Ex.PJ, duration between death and postmortem was 24 hours and the postmortem was conducted on 07.01.2019 at 4:10 P.M., the occurrence was of the night of 06.01.2019. He has contended that the chain of evidence/ circumstances has been fully proved as per law by the prosecution and the learned trial Court has wrongly acquitted the accused of the charges framed against him.

7. In order to prove its case prosecution has examined PW1-Ms.

Riti Saini Senior Scientific Officer (Scene of Crime), Panchkula, who

deposed regarding inspecting the crime spot on 07.01.2019 along with her team at the request of police of Police Station, Kalka and has proved on record her scene of crime report Ex.PA.

PW2-HC Devender Singh is the Draftsman, who proved scaled site plan Ex.PB prepared by him on 14.01.2019 after taking rough notes on 12.01.2019 on the demarcation of the Investigating Officer.

PW3 EHC-Sayyad Khan, being an associate of the Investigating Officer on 11.01.2019, proved the disclosure statement of the accused Ex.PC, being an attesting witness thereof.

PW4-Kamal Kumar, complainant is a material witness of the prosecution and is complainant in this case. He stated that he was the first person, who noticed the dead body of Shyam Nath Baba lying in the pool of blood on the floor, in the basement of Prachin Mansa Puran Hanuman Mandir, Kalka, when he went to said temple to pay obeisance as usual. He stated that he informed in this regard to Shri Darshan Giri, who called Som Nath - Municipal Councilor, Kalka and then the police was informed. He proved the statement Ex.PD made by him to the police in this regard and also proved the recovery memo Ex.PE, vide which the articles lifted from the spot were taken into possession.

PW5-Mohinder Singh Chaudhary stated that on receiving information regarding murder of Baba Shyam Nath on 07.01.2019, he reached the temple at about 08:30 am. The police had already reached there and was conducting proceedings. He also stated that the police had inspected the CCTV footage installed at the spot and collected samples; Aactiva and chain etc. of Baba were found stolen.

PW6-Hem Dutt Sharma also deposed regarding his visit to the

spot after receiving information about murder of Baba Shyam Nath. He proved his statement Ex.PG as recorded by the police.

PW7-Dr. Cherry Gupta, Medical Officer at CHC Kalka, conducted postmortem on the body of the deceased on 07.01.2019 alongwith Dr. Dheeraj Kapoor, and proved the postmortem report Ex.PJ. She also stated that the injuries as mentioned in the postmortem report could be inflicted by using blunt weapon like brick.

PW8-Dr. Hardeep Singh, Medical Officer General Hospital, Sector-6 Panchkula, medico-legally examined the accused on 12.01.2019 and proved his opinion at Point A on application Ex.PK to the effect that there was no evidence of recent sodomy in last few hours, but seeing the clinical findings, possibility of sodomy cannot be ruled out.

PW9-Som Nath deposed regarding visiting the spot after receiving information about murder of the priest of Prachin Mansa Puran Hanuman Mandir; and informing the police regarding the same.

PW10 Dr. Dheeraj Kapoor, Medical Officer, was one of the members of the Board, who conducted postmortem on the body of deceased on 07.01.2019. He corroborated the testimony of PW7 and also proved the postmortem report Ex.PJ.and gave his opinion Ex.PN after examining the duly sealed brick as produced by the police.

PW11-Sushil Kumar is the owner of the rented accommodation of the accused. He deposed that House No.782/ 783, Paniwala Parao, Kalka was rented out by him to accused Junaid Alam @ Shivam vide rent deed Ex.PQ in November 2018.

PW12-Dr. Harish Garg, Medical Officer Sub Division Hospital, Kalka conducted medico-legal examination of accused on 09.01.2019 on

police request Ex.PS. He testified that no injury / bleeding / pain / discharge around the anus was found by him during the examination.

PW13-HC Narender Singh, MHC Police Station Kalka deposed regarding depositing of sealed sample parcels with him by SI Jai Singh. All the sealed parcel except parcel of DVR recording were handed over by him on 05.02.2019 to HC Pardeep Kumar vide RC No.45 for depositing the same at FSL, Madhuban, who deposited the same there and handed over the receipt to him on the same day. He further deposed that he handed over the sealed parcel containing DVR recording to HC Pardeep Kumar on 22.03.2019 vide RC No.78 for depositing the same with Director, CFSL Chandigarh, which was returned by CFSL authorities on the same day. Then again on 09.04.2019 he handed over the sealed parcel to HC Pardeep Kumar, who after depositing the same with CFSL Chandigarh, handed over the receipt to him on the same day. He has also deposed about handing over of one blank hard-disk alongwith sealed parcel on 11.04.2019 to HC Pardeep Kumar. He deposed about depositing of one sealed parcel containing finger print expressions collected by Ct. Bintu Ram from the spot on 16.01.2019. The said sealed parcel was handed over to Ct. Sunil Kumar on 26.02.2019 for depositing the same at SCRB, Madhuban and the receipt regarding its depositing was handed over to him by Ct. Sunil Kumar on the same day. He deposed that during the period the case property remained in his possession, neither he tampered with the same nor allowed anyone to do so.

PW14-HC Rakesh Kumar, who also remained associated with SI Jai Singh -Investigating Officer of the case, deposed about various investigating proceedings conducted by SI Jai Singh, during investigation of

this case. He also proved the disclosure statement of the accused Ex.PY as suffered by him on 10.01.2019 being an attesting witness thereof. He also deposed about the recovery effected on 12.01.2019 pursuant to his disclosure statement dated 11.01.2019.

PW15-CT. Bintu Ram, Finger Print Expert, testified about his visit to the spot of occurrence on receipt of telephonic message from ASI Jai Singh. He deposed that he found some chance prints / finger prints on the iron gate and on LED screen kept on the spot, which were lifted by him and proved his report in this regard as Ex.PAG.

PW16-Ashok Saini, deposed that he had purchased the Activa bearing registration No.HR-49E-3913 from Baba Shyam Nath in the year 2016, but RC was not transferred in his name and its physical possession also remained with Baba.

PW17-EHC Jatinder Kumar deposed that on 07.01.2019, on receipt of information, he alongwith SI Jai Singh and HC Rakesh Kumar reached at the spot. They found a blood-stained dead body lying in kitchen area in basement of the temple. He proved the statement Ex.PD made by Kamal Kumar to SI Jai Singh; the endorsement Ex.PAN made by SI Jai Singh on the said statement and stated that the same was handed over to him by SI Jai Singh for registration of FIR.

PW 18 -ASI Pardeep Kumar also remained associated during the investigation with SI Jai Singh on 09.01.2019, 10.01.2019 and 12.01.2019. He deposed regarding the various proceedings conducted during investigation by Jai Singh and also proved the disclosure statement Ex.PY suffered by the accused on 10.01.2019. He also deposed regarding handing over eight parcels by MHC Narinder Kumar on 05.02.2019 for

depositing the same at FSL, Madhuban, which he deposited on the same day and handed over receipt to HC Narinder Kumar. He also testified about handing over one sealed parcel containing DVR to him by HC Narinder Kumar on 22.03.2019 and returning of the same by CFSL authorities for want of two hard disc or one TB each; and re-handing of the said sealed DVR alongwith one hard disc to him on 09.4.2019, which was deposited by him with CFSL Chandigarh. He also deposed about depositing of one blank hard disc with CFSL Chandigarh, which was handed over to him by MHC Narinder Kumar on 11.04.2019.

PW19-Inspector Lalit Kumar the then SHO at Police Station Kalka, identified the signatures of SI Jai Singh, who had worked under him and he had seen him writing and signing in the official course, on Ex.PAU, Ex.PU/1, Ex.PAV and Ex.PAV/1. He also identified his signatures on various statements of witnesses recorded by SI Jai Singh.

Prosecution also tendered into evidence FSL report Ex.PH, CFSL report Ex.PAW, death report of SI Jai Singh as Ex.PAM.

8. After having heard learned counsel for the appellant-State of Haryana and perusing the impugned judgment as well as other relevant record, we are of the considered opinion that the prosecution in the instant matter was unable to prove its case against the accused beyond reasonable doubt.

9. It is evident from the evidence on record that this is not a case of direct evidence and there is no such witness in this case who had witnessed the alleged occurrence. There is no doubt that conviction can be based solely on the circumstantial evidence, but it should be tested by the touch stone of law relating to circumstantial evidence. The prosecution is to

prove that the chain of the circumstantial evidence is complete and there should be no gap or missing link in the chain of evidence.

In ***Padala Veera Reddy Vs. State of A.P. and others (AIR 1990 Supreme Court 79)***, it was laid down by the Hon'ble Apex Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established,
- (2) those circumstances. should be of a definite tendency unerringly pointing towards guilt of the accused.
- (3) the circumstances. taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and
- (4) 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.”

10. In ***Navaneethakrishnan Vs. The State by Inspector of Police, Criminal Appeal No.1134 of 2013*** decided on 16.04.2018 the Hon’ble Supreme Court held as following:

“The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the

chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions."

11. It is in context of above settled principles that the evidence led by the prosecution has to be analyzed. No evidence has been produced by the prosecution in order to prove that accused ever stayed or resided with deceased Baba Shyam Nath in the temple premises, on 06.01.2019 or prior thereto. PW4 Kamal Kumar and PW5 Mohinder Singh Chaudhary claim to be regular visitors to the temple but they are also silent regarding this aspect. There is not even an iota of evidence that deceased was seen in the company of accused on the intervening night of 6/7.01.2019. In fact, there is no evidence as to when deceased Baba Shyam Nath was last seen alive. As per Postmortem report Ex.PJ, the autopsy started on 07.01.2019 at 04:10 p.m and probable time of death was within 24 hours between the death and postmortem. From this it can be inferred that the death of deceased Baba Shyam Nath could be possible at anytime between around 04:00 p.m on 06.01.2019 till the morning, when the dead body was spotted. So, this assumes importance when he was seen alive for the last time, but the evidence regarding the same is missing in the present case.

12. The prosecution has relied upon the factum of matching of the

blood group on the physical evidence collected from the spot and clothes of the accused recovered at his instance. As per the FSL report the occurrence came to the fore on 07.01.2019 when PW4-Kamal Kumar visited the temple in the morning to pay obeisance as per his routine. He informed Darshan Giri, priest of the nearby temple, who informed Som Nath – Municipal Councilor and then, police was informed. As per the seizure memo Ex.PE, SI Jai Singh collected physical evidence. There is reference of physical evidence also, in the crime scene visit report Ex.PA, which has been proved by PW1 Ms. Riti Saini, the Senior Scientific Officer. Though she did not lift the physical evidence but she assisted the Investigating Officer in this regard. But it is doubtful that how and where Ex.PE was prepared and got attested from witnesses, as there are three different versions from three witnesses regarding the memo Ex.PE. PW4 Kamal Kumar – the first informant and one of the attesting witnesses to Ex.PE stated that he had signed the same after about 15 days of the incident, when police called him and at that time, Som Nath and HC Rakesh Kumar, the other witnesses to this memo, were not present. PW9 Som Nath the other attesting witness stated that he signed Ex.PE after 2-3 days of the incident, at Police Station Kalka where he had gone on asking of SI Jai Singh and at that time he was alone and no other witness was present. In complete contradiction to the same, PW14 HC Rakesh Kumar stated that Ex.PE was prepared by the Investigating Officer – SI Jai Singh on 07.01.2019 itself at the spot and it was witnessed by him, complainant Kamal Kumar and Som Nath. As Investigating Officer-SI Jai Singh, expired, so these apparent contradictions have not been reconciled and it appears that the said memo was got signed from the witnesses on different dates as per the convenience and not at the

same time at the spot.

13. The perusal of testimony of PW1 – Ms. Riti Saini, Senior Scientific Officer reveals that finger print Expert Ct. Bintu Ram had picked up the finger prints from the spot of occurrence. Ct. Bintu Ram also appeared in the witness box as PW15 and stated that after spot inspection on 07.01.2019 alongwith the Investigating Officer of the case, he found some chance prints / finger prints on iron gate and LED screen, which he lifted and sealed the same in the parcel and he handed over the sealed envelope to the Investigating Officer SI Jai Singh. As per report Ex.PAG, the sealed envelope containing chance prints was taken into possession on 16.01.2019, after about nine days of the occurrence. Again it has not been explained that if the finger prints were lifted on 07.01.2019, then where the same were kept till 16.01.2019 for handing over the same to the Investigating Officer SI Jai Singh. There is no evidence that sample finger prints of the accused were ever taken for matching the same with chance/ finger prints lifted from the spot. Again there is no evidence on record to prove that the chance prints lifted from the spot by Ct. Bintu Ram were ever analyzed in any Lab and the same were found to be that of the accused. Rather, from the statement of PW-13MHC Narender Singh, it is made out that the same were not analysed in any lab, as this witness stated that the finger prints collected from the spot were sent to the State Crime Report Bureau (in short 'SCRB') Madhuban on 26.02.2022, but the parcel was not accepted by the SCRB, Madhuban and was returned with some objection. The parcel was then handed over to the Investigating Officer SI Jai Singh. Then he categorically stated that thereafter the parcel was not sent to the SCRB, Madhuban as per entry in the record at Point 'X' on Mark A. So, on the basis of these chance prints/

finger prints lifted from the spot the accused cannot be connected with the crime in the present case.

14. The prosecution has also relied upon CCTV footages of the spot. As per seizure memo Ex.PE, a DVR make HIKVISION was found at the spot which was sealed with the seal 'JS' and was taken into possession. PW4- Kamal Kumar and PW5 Mohinder Singh Chaudhary stated that police had inspected the CCTV installed in the temple on 07.01.2019 itself, but none of these witnesses have stated that accused was found visible in the CCTV footage. There is nothing in memo Ex.PE that said DVR was played at that time. PW14 HC Rakesh Kumar, who is the attesting witness of Ex.PE is also silent regarding playing of the DVR containing the CCTV footages.

15. As per the statement of PW14 HC Rakesh Kumar and PW18 ASI Pardeep Kumar, accused was arrested on 09.01.2019, on the basis of secret information. It has not been explained that how the suspicion arose against the accused and on which suspicion, he was arrested. Admittedly, prior to the interrogation of the accused on 10.01.2019 and recording his disclosure statement, there was nothing against him so as to connect him with the crime.

16. It was also tried to be projected by the prosecution that accused was subjected to sodomy by deceased Baba Shyam Nath, which is evident from application Ex.PS, moved by SI Jai Singh to the SMO, CHC Kalka on 09.01.2019. Ex.PU, MLR of the accused proved by PW12 Dr. Harish Garg, reflects no injury / bleeding / pain around the anus. Accused was referred for surgical opinion to the higher center. Then the accused was examined at General Hospital, Sector 6, Panchkula and as per the report of Dr. Hardeep (PW8), there was no recent sodomy in the last few hours, though possibility

of sodomy could not be ruled out. It is pertinent to note that accused made no allegation of sodomy in his disclosure statements. In these circumstances, trial Court has rightly observed that it appears that the prosecution tried to concoct a motive for the accused to connect him with the crime.

17. As per the prosecution, first disclosure statement Ex.PY was suffered by the accused on 10.01.2019 but no recovery was effected pursuant to this disclosure statement. Then the second disclosure statement Ex.PC was suffered by the accused on 11.01.2019. As per PW3 Ct. Sayyad Khan, the statement suffered by the accused was recorded at Panipat on a laptop. But it has not been explained that why the accused was taken to Panipat. Otherwise also, there is no doubt that the statement recorded on the laptop can be easily edited/ altered as per convenience. In this eventuality, it becomes doubtful that the accused suffered any voluntary disclosure statement as projected by the prosecution.

18. The prosecution has heavily relied upon the alleged recoveries effected pursuant to the disclosure statement Ex.PC suffered by the accused on 11.01.2019, but these recoveries are also highly doubtful.

19. As per the claim of the prosecution on the basis of disclosure statement suffered on 11.01.2019, accused got recovered various articles from his rented room on 12.01.2019 in the presence of PW18-HC Pardeep Kumar and PW14-HC Rakesh Kumar. As per the recovery memo Ex.PZ, a red coloured bag was recovered from the room containing currency notes of Rs.965/- and coins valuing Rs.5,895/-, besides mobile phone make OPPO with three SIMs; box of mobile and a bill issued by Balaji Communications, Kalka dated 07.01.2019 in the name of accused; another mobile phone of

OPPO inserted with two SIMs belonging to deceased Baba Shyam Nath; a diary of deceased Baba Shyam Nath; a medical report and key of scooty. As per the recovery memos Ex.PAC & Ex.PAD, blood-stained clothes of the deceased, and pieces of shoes kept in a polythene were recovered from an empty plastic water tank lying on the roof of the rented room of the accused. From the site plans Ex.PAQ, Ex.PAR and Ex.PAS, regarding the place of recovery, it is revealed that it is a single room, which was on rent with the accused. Owner of the House No.782/783, Paniwala Parao, Kalka, examined as PW11-Sushil Kumar, stated that a room was rented out to the accused in November 2018 vide rent deed Ex.PQ but in his cross-examination, stated that he had taken possession of the tenanted premises on 11.01.2019 and had locked the same and ever since then it is in his possession. He also stated that police came to said room on 09.01.2019 and searched the same and thereafter, police never joined him in the investigation. On re-examination by the prosecution, he stated that he had left the premises unlocked on 09.01.2019 after search was made by the police and he never locked the same on 11.01.2019 and police did not call him on 12.01.2019, when police might have come in the rented premises of the accused. But it has not been explained by the prosecution that if the police had already searched the rented premises on 09.01.2019, then how it was possible that the bag containing the belongings of the deceased and other articles did not come to notice, moreso, when only a single room was to be searched. In case PW11 had locked the premises on 11.01.2019, it was not possible for the police, to enter the said room on 12.01.2019 to effect the recovery. This aspect was sought to be glossed over while conducting the re-examination of PW11, who stated during his re-examination that he

had left the premises unlocked. However, his testimony remained uncontroverted to the effect that the said room was searched by the police on 09.01.2019. If the police had searched the room on 09.01.2019, then there was no reason to again search it on 12.01.2019, when the prosecution claims to have effected all the recoveries.

20. From the statement of PW14 HC Rakesh Kumar and PW18 HC Pardeep Kumar, it emerges that there are other material contradictions regarding the recovery. As per PW14 HC Rakesh Kumar, owner of the house Sushil Kumar was present throughout the time when recovery was effected on 12.01.2019. This fact has been denied by PW11 Sushil Kumar, who stated that police did not call him on 12.01.2019, when police might have come to the rented premises of the accused. PW18 HC Pardeep Kumar has also stated that Sushil Kumar was not present. PW11 Sushil Kumar stated during his cross-examination that he had not locked the premises, whereas PW14 HC Rakesh Kumar stated that the room was locked and accused had told him that the keys were lying in the bathroom. PW18 HC Pardeep Kumar again contradicted him by stating that room was not locked and the same was simply bolted from outside. All these material contradictions have created doubt about the recoveries allegedly effected from the rented room of the accused at his behest as projected by the prosecution.

21. The prosecution has claimed that on the basis of disclosure statement Ex.PC suffered by the accused on 11.01.2019, scooty bearing registration No.HR-49E-3913 was recovered from Sukarmal Gali, Kalka while lying parked in the street, which was started with the help of the key recovered from the rented room of the accused. It is to be noted at this

juncture that as per PW16-Mr. Ashok Joshi, deceased Baba Shyam Nath had sold the scooty to him in the year 2016, but the Certificate of Registration was not transferred in his name and physical possession also remained with the deceased. It is quite improbable that if deceased had sold the scooty to Ashok Saini in 2016, even physical possession would have remained with deceased.

22. PW1 Ms. Riti Saini, has stated that she did not inspect the Activa of the deceased parked outside the premises, when she visited the spot on 07.01.2019. So, it is established that scooty was lying parked outside the temple premises on 07.01.2019, which falsifies the claim of the prosecution that the scooty was got recovered by the accused, as per the disclosure statement Ex.PC suffered by him on 11.01.2019 from Sukarmal Gali, Kalka. Said recovery thus becomes extremely doubtful.

23. PW5 Mohinder Singh Chaudhary, in his statement Ex.PF before the Investigating Officer disclosed that mobile No.97296-08713 and 87085- 76292 were being used by deceased. As per recovery memo Ex.PZ, a mobile phone of make OPPO with two SIMs inserted therein was also recovered from the rented room of the accused at his behest and on checking the Call Detail Records, the IMEI number was found to be matching with the mobile number of the deceased. But the said Call Detail Record has not been produced on record by the prosecution. There is no evidence that any particular mobile number was in the name of deceased Baba Shyam Nath. Neither any Customer Application Form nor Call Detail Record has been proved on record.

24. Prosecution has also relied upon the CCTV footage retrieved from a DVR found from the spot on 07.01.2019. During the statement of

PW18 ASI Pardeep Kumar a sealed parcel Ex.PAX sealed with seven seals bearing impression DPG of CFSL Chandigarh alongwith specimen seal letter Ex.PAX/1 was produced. When the said parcel was opened in the Court, it was found to contain a hard disc having data retrieved from DVR Ex.MO/3. The hard disc was played in the Court, which was found to contain many footages of CCTV clippings. In one of the clippings, the accused was found entering the temple premises and in the other clipping, accused was found entering the room in the temple premises alongwith the deceased; yet in an another clipping, accused was found coming outside the room alone and moving hurriedly. The prosecution has tried to connect the accused with the crime on the basis of these clippings. But this CCTV footage and the DVR have not been proved by the prosecution as per law. No witness has been examined to prove as to who had examined the DVR and who retrieved the data to the hard disc from the said DVR and who converted the same in the CDs. Certificate under Section 65-B of Indian Evidence Act has not been produced. It is not proved that clippings of the CCTV contained in the hard disc were of the relevant time i.e. intervening night of 6/7.01.2019. Date and time of the CCTV footage is not proved, thus, on the sole basis of these clippings, accused cannot be connected with the crime in question.

25. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble

the Supreme Court in '*Mahamadkhan Nathekhan vs. State of Gujarat*'
2014 (14) SCC 589.

26. Therefore, taking into consideration the case of the prosecution in its entirety, facts and circumstances of the present case, the chain of circumstantial evidence can not be said to be complete in the present case leading to an inevitable conclusion of the guilt of the accused who has been rightly acquitted by the trial Court. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned judgment dated 14.07.2022.

27. No other argument was addressed.

28. In view of the above, no case is made out for grant of leave to appeal against acquittal of the respondent and the same is declined. Application for leave to appeal being devoid of any merit stands dismissed.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

20.08.2024.

Komal

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