



2024:DHC:9586-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 5th November, 2024
Pronounced on: 12th December, 2024

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CRL.A. 353/2002**SHAMIMA KHATOON**

.....Appellant

Through: Mr. M.A. Niyazi, *Amicus Curiae* with Ms. Anamika Ghai Niyazi, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi & Mr. Arquam Ali, Advocates.

Versus

STATE

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP for the State with Mr. Lalit Luthra & Ms. Divya Yadav, Advocates.
Insp. Kuldeep Singh, P.S. Kotwali

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as, 'CrPC') has been filed assailing the judgment of conviction dated 19th January, 2002 and order on sentence dated 22nd January, 2002 passed by Mr. P.C. Ranga, Ld. Addl. Sessions Judge, Tis Hazari Court, Delhi, whereby the Appellant has been convicted in *Sessions Case No. 23/2001* arising out of *FIR No. 645/1999*, registered at Police Station Kotwali, under

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Sections 302/34 of the Indian Penal Code (hereinafter referred to as, 'IPC').

2. *Vide* the aforesaid impugned judgement of conviction and order on sentence, the Appellant had been convicted for the offences punishable under Sections 302 and 34 of the IPC. The Appellant has been sentenced to undergo imprisonment for life and a fine of Rs. 1000/-, and in default of payment of fine, to further undergo a rigorous imprisonment for a period of one month for the offences under Sections 302 and 34 of the IPC.

BRIEF BACKGROUND

3. Brief facts necessary for the disposal of the present appeal are as follows:

i) On 6th November, 1999, at 06:45 a.m., the Appellant lodged a missing report regarding her husband, Naushad, *i.e.*, the deceased, who went missing after he had left his *jhuggi* in Mool Chand *Basti* on the previous evening, *i.e.*, on 5th November, 1999 at about 5 p.m. The Appellant further gave the description of her husband, Naushad. Based on the said information, DD No. 23A (*Ex. P4*) was recorded at P.S. Kotwali by Head Constable Attar Singh, PW-10. The information of this incident was given to Police Control Room and a copy of the said DD was marked to one Pardeep Kumar, in-charge, P.P. Yamuna *Pushta*. On the same day, the Appellant went to P.S. Darya Ganj and lodged another missing report of her husband, after which DD No. 19A (*Ex. P3*) was recorded at about 9:30 a.m.

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ii) On 6th November, 1999 information was received by P.P. Yamuna *Pushta* of P.S. Kotwali regarding a dead body which was lying in the fields near the bank of River Yamuna. Based on the said information, DD No. 10 (*Ex. PW-17/A, 18/A*) was recorded at P.P. Yamuna *Pushta* of P.S. Kotwali by Constable Rajeev Kumar, PW-17. A copy of the said DD was handed over to SI Naresh Kumar, PW-5. Thereafter, SI Naresh Kumar along with other police officials including Head Constable Mansab Ali, Constable Suresh and Constable Brahmpal went to the place of occurrence, *i.e.*, field of one Ganga Ram near Yamuna *Pushta*, Indira Colony and found the corpse of an unknown male lying there. Subsequently, the S.H.O., Inspector Rajaram, PW-18 and Inspector Umesh Singh, PW-21 reached the spot, after which PW-5 handed over DD. No. 10 to PW-18.

iii) PW-18 then made an endorsement (*Ex. PW18/A*) and sent the *ruqqa* to P.S. Kotwali on the basis of which *FIR No. 645/1999* was registered in the present case on 6th November, 1999 by ASI Shashi Gupta, PW-15. Further, PW-18 inspected the spot and prepared the unscaled site plan (*Ex. PW-18/B*). The crime team and the photographer were also summoned to photograph the spot, accordingly, the crime team inspected the spot. PW-18 further seized blood-stained from the spot which was placed into sealed parcels and were taken into possession *vide* seizure memo (*Ex. PW5/A*).

iv) PW-18 also removed the shoes of the deceased which were then sealed and were also taken into possession *vide* seizure memo (*Ex. PW5/B*). Inquest proceedings were also conducted in respect of the deceased Naushad after he was identified by Mohd. Farooq (PW-2)

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and Mohd. Sagir (PW-3). Statements of the said prosecution witnesses were also recorded by PW-18 as *Ex. PW2/A* and *Ex. PW 3/A* respectively.

v) The body of the deceased was sent to Aruna Asaf Ali Hospital by PW-18 to conduct the post-mortem. Post-mortem was conducted by Dr. K. Goel, PW-1 and the report dated 8th November, 1999 (*Ex. PW-1/A*) was obtained. As per the said report, the cause of death was determined as *asphyxia* caused due to ligature strangulation.

vi) As per the Report, there were multiple abrasions with bruises, scattered over the right side of the forehead and multiple small abrasions scattered over the left elbow and left forearm of the deceased. It was opined that all the injuries were *ante-mortem* in nature and the ligature mark was caused by some hard flexible cord like ligature. Additionally, PW-1 stated that the mechanical pressure over the neck by ligature was sufficient to cause death in ordinary course of nature. The time since death was determined to be two and a half days prior to conducting the post-mortem.

vii) During the investigation, the Appellant was suspected for involvement in the murder of her husband. She was arrested three days later, on 9th November, 1999. Disclosure Statement of the Appellant was recorded (*Ex. PW-5/E*) on the same day, where she admitted her complicity in the murder of her husband Naushad. In the said statement, she disclosed certain facts regarding her illicit relationship with one Niyaz, with whom she made a plan to kill Naushad. In pursuance of the said plan, on the night of 5th November,

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1999, the Appellant and the deceased went for a walk after dinner during which she took him to the fields near Yamuna River. She further disclosed that Niyaz and one Akbar Shah were already present at the spot, after which Niyaz and Akbar Shah proceeded to strangle Naushad which caused his death. After doing so, the Appellant proceeded to file a missing person report on 6th November, 1999 at P.S. Kotwali and P.S. Daryaganj respectively, in continuance of the same plan. Akbar Shah, one of the co-accused was arrested on 28th January, 2000. Accused Niyaz could not be traced by the police as he had escaped, and, therefore, he was declared as a proclaimed offender.

4. After the investigation was concluded, charges were framed on 17th May, 2000 by the learned Trial Court against the Appellant and co-accused Akbar Shah in furtherance of the common intention to cause the death of Naushad by strangulation thereby murdering him and for committing an offence punishable under Sections 302/34 IPC. Both the Appellant and the co-accused Akbar Shah pleaded not guilty to the aforesaid charges and claimed trial.

5. Prosecution has examined 21 witnesses in order to prove the charges levelled against the Appellant and the co-accused Akbar Shah. Learned Trial Court after examining the testimonies of the prosecution witnesses and analysing various other evidences placed on record and statements of the Appellant and co-accused Akbar Shah under Section 313 of the Cr.P.C. proceeded to acquit Akbar Shah as it did not find sufficient evidence on record to convict the said co-accused. The Appellant was, however, convicted and sentenced for the offence



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punishable under Sections 302/34 of the IPC, as already noted, hereinabove. Hence, the present appeal has been filed challenging the impugned judgment of conviction and order on sentence. In the present appeal, *vide* order dated 4th March, 2003, the sentence of the Appellant was suspended during the pendency of the appeal by a Ld. Division Bench of this Court.

SUBMISSIONS ON BEHALF OF THE APPELLANT

6. *Vide* order dated 9th April, 2024, Mr. M.A. Niyazi, Id. Counsel was appointed as an *Amicus Curiae* in the present matter in order to assist the Appellant. Learned *Amicus*, has addressed the following submissions on behalf of the Appellant:

(A) Circumstantial Evidence

i. Ld. Counsel for the Appellant submits that the present case is based entirely on circumstantial evidence which requires each chain of facts to be fully established pointing towards the guilt of the Appellant. He urged that the following facts brought forth by the prosecution need to be examined to identify whether they actually establish the guilt of the Appellant beyond reasonable doubt. The Counsel for the Appellant further raised following questions:

(a) Whether the Appellant and deceased were husband and wife or were living as husband and wife?



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(b) Whether they were living together in the *jhuggi* mentioned by the prosecution?

(c) Whether Naushad met and explained PW-2, Mohd Farooq and PW-3, Mohd Sagir about the problems faced in his marital relationship because of the illicit relationship between Appellant and Niyaz or between Appellant and Niyaz & Akbar?

(d) Whether Naushad had received any threats from Niyaz and Akbar?

(e) Whether PW-2 had met or seen Niyaz & Akbar together and then Naushad and Appellant together?

(f) Whether PW-2 saw all four persons going towards Yamuna river in the night around 10:00 p.m. on 05th November, 1999?

(g) Whether Naushad and Appellant were last seen together on 5th November, 1999 around 10 p.m. pm before the death of Naushad ?

(h) Whether the Appellant lodged missing report of Naushad dated 6th November 1999 alleging that Naushad was missing since around 5 pm on 5th November, 1999?

(i) Whether the missing reports DD No. 23A and DD. No. 19A appear to be genuine?



(j) Whether Appellant was correctly apprehended by the police?

(k) Whether acquittal of Akbar Shah breaks the chain of circumstances in the prosecution case, if at all any chain is made *qua* the accused Appellant?

(l) Whether the chain of events is complete and points towards the guilt of the Appellant?

ii. Learned Counsel places reliance on the following judgements to summarize the law laid down by the Hon'ble Supreme Court regarding circumstantial evidence:

a) **Ramanand alias Nandlal Bharti v. State of Uttar Pradesh**¹,

b) **Rahul v. State of Delhi & Anr.**²

B. Credibility of the Depositions of PW-2 and PW-3

iii. Learned *Amicus* further submits that the entire conviction of the Appellant by the Id. Trial Court is based on circumstantial evidence and the testimonies given by Mohd Farooq (PW-2), Mohd. Sagir (PW-3) and Smt. Shama (PW-6). It is argued that testimony of PW-2 has several contradictions and infirmities. It is submitted that PW2's testimony is not believable as he has met the deceased only twice *i.e.*, once ten days before the incident on 6th November, 1999 and, thereafter, one day before the dead body was recovered. It is submitted

¹ 2022 SCC OnLine SC 1396 (Paras 45-48)

² 2022 SCC OnLine SC 1532 (Paras 17-18)



that PW-2 is related to the deceased as the deceased was his *saadu*'s son. The entire case of the prosecution is based on testimony of PW-2 to the effect that he last saw the Appellant- Shamima Khatoon along with the deceased on 5th November, 1999 in the evening at about 10:00 p.m. and he also saw the other two accused persons namely Niyaz and Akbar around 10:00 p.m. at the same time around the banks of river Yamuna.

iv. It is the case of the Appellant that the prosecution has tried to connect the testimony of PW-2 to state that this was the last seen evidence and there is a live link between his testimony and the death of the deceased. However, the prosecution has been unable to deal with the contradictions in the testimony of PW-2 in respect of the identification of the deceased and whether he was in fact a reliable and credible witness at all. It is also submitted that the co-accused Akbar has been acquitted due to contradictions in the testimony of PW-2 in respect of the possession of the watch which belonged to the deceased, which allegedly is stated to have been recovered from the co-accused Akbar. *Ld. Amicus* further states that there have been no recoveries from the Appellant or any other evidence which can connect the Appellant to the demise of Naushad.

v. As far as PW-3, Mohd Sagir is concerned, the *Ld. Amicus* submits that the testimony given by PW-3 is not corroborated by PW-2 in any manner. In fact, PW-3 had testified to the effect that he had met Naushad, the deceased on 4th November, 1999 and that relationships between him and his wife were cordial. Thus, there were no circumstances which were mentioned by PW-3 except the alleged



hearsay evidence that Naushad had informed PW-3 that his wife was having an affair with Akbar and Niyaz. Apart from this, evidence of PW-3 also contradicts the testimony of PW-2 to the effect that he had met the Appellant for the first time as stated in his cross-examination. Further, PW-3 was not aware as to who the co-accused Akbar was. He has also stated that he did not have any acquaintance with either Niyaz or Akbar Shah except on one occasion where he saw them passing by, it is thus submitted, that this is not sufficient evidence to convict the Appellant.

C. Self-contradictions in the depositions of Smt. Shama (PW-6)

vi. It is further submitted by the Id. Counsel for the Appellant that PW-6, Smt. Shama had deposed that the Appellant used to reside at a distance from 4-5 *jhuggis* from PW-6's *jhuggi*. Further, she deposed that the deceased used to reside in the same *jhuggi* with the Appellant and worked as a rickshaw puller. It was also deposed by PW-6 that she knew the other co-accused Akbar and Niyaz who also used to reside in the *jhuggis* of her *basti*. It was further stated by her, that she had seen the Appellant and the deceased quarrelling almost daily, she also deposed that there had been *maar-peet* between the Appellant and the deceased. Id. Counsel for the Appellant submits that upon being confronted with her statement (Ex. PW.6/DA), the abovementioned facts were not recorded in the said statement.

vii. Id. Counsel for the Appellant further submits that the PW-6 had not met the Appellant before and her evidence is contradictory to the



effect that she states the deceased and wife were quarrelling, at the same time she stated that she met the Appellant only for the first time while she was eloping with one of the co-accused. In her cross-examination, PW-6 also states that she met the Appellant for the first time when she was arrested. According to the Id. Counsel for the Appellant, the deposition of PW-6 establishes the fact she is a stock-witness, her examination in chief was an improved one even on the most material facts.

viii. Ld. Counsel for the Appellant therefore has submitted that an analysis of the depositions of PW-6, Smt. Shama, along with the testimonies of PW-5, PW-18 and PW-21 is sufficient to state that she was a stock witness as also a police informer. It is clear from the depositions of PW-18 and PW-21 that they had falsely implicated the present Appellant at the instance of PW-6. It is also submitted that both the Investigating Officers have acted on surmises, conjectures and hearsay evidence without examining any material evidence.

D. Genuineness of the two Missing Reports

ix. Learned Counsel for the Appellant has submitted that both the missing reports, *i.e.*, DD No. 23A (*Ex. P4*) registered at P.S. Kotwali and DD No. 19A (*Ex. P3*) registered at P.S. Darya Ganj are concocted and back dated and were in fact not lodged by the present Appellant. It is submitted that there was no cogent reason as to why the Appellant ought to have lodged the two missing reports.



x. Moreover, suspicion is also raised on the first DD Entry, *i.e.*, DD No. 23A (*Ex. P4*) where the Appellant had signed in Urdu language, whereas she is, in fact, an illiterate lady, who did not know how to read and write and thus uses thumb impression as a means of identification as depicted in the order on framing of charge dated 17th May, 2000 for the offences punishable under Sections 302/34 of the IPC as also in her statements under Section 313 CrPC. It is, therefore, stated by the Id. Counsel for the Appellant that the present case is one where the Appellant has been falsely implicated. Further suspicions have been raised as the missing reports have been lodged with general features without any specific marks and seeking the signatures of the Appellant in the DD register.

E. Analysis of the Post-Mortem Report

xi. Learned Counsel for the Appellant submits that insofar as the post-mortem report (*Ex. PW-1/A*) is concerned, PW-1, Dr. K. Goel, had not testified that the deceased had died immediately after consuming dinner and in the absence of such an observation, there is nothing in the report which can be attributed to the guilt of the Appellant. Further, it has been stated by PW-1 in the said report that the hyoid bone of the deceased was intact. According to Id. Counsel, it is to be noted that though the fracture of the hyoid bone in cases of strangulation is not a *sine qua non*, however the percentage of fracturing of the hyoid bone is highly possible in cases of strangulation. To emphasize the same, reliance has been placed on an extract from Modi's Medical Jurisprudence and Toxicology, 23rd Edition. Further, on the point of intactness of the hyoid bone in cases



of strangulation, reliance has been placed on the judgements in **Mohd. Zahnid v. State of Tamil Nadu³** and **Sanjay Anand v. State⁴**.

F. Reliance on Disclosure Statement is contrary to the provisions of Section 25 of the Indian Evidence Act.

xii. It is also argued by Mr. Niyazi, Id. Counsel that the Trial Court has proceeded on the basis of the disclosure statement of the Appellant which is wholly inadmissible in evidence. It is submitted that the impugned judgement of the Id. Trial Court has specifically relied on the disclosure statement of the Appellant and the same has been exhibited as *Ex. PW-5/E*, however, at the same time, the Id. Trial Court clarifies that the said statement is not admissible in evidence. Even the disclosure statement of the co-accused Akbar had been exhibited by the Id. Trial Court as *Ex. PW-5/F*. To support his contention, Ld. Counsel has placed reliance on **Rahul v. State of Delhi⁵**, to contend that it is a gross error to exhibit and rely upon the entire disclosure statement of an accused except what is allowed under Section 27 of the Evidence Act.

G. Effect of acquittal of the co-accused Akbar on conviction of the Appellant.

xiii. Learned Counsel submits that the legal issue as to whether if the co-accused has been acquitted, the Appellant alone can be convicted

³ (1999) 6 SCC 120

⁴ 2010 SCC OnLine Del 1298

⁵ (2023) 1 SCC 83



for the offence under Section 302/34 IPC would also be required to be considered in the present appeal. Reliance is placed by the Id. Counsel on the testimony of PW-18, Inspector Rajaram to state that the manner in which the involvement of the Appellant, Niyaz and Akbar was suspected in the murder of Naushad had been on the basis of local inquiries and not on the testimonies of PW-2 and PW-3. Reliance has been placed on **Sukhram v. State of M.P.**⁶ to contend whether Section 34 of the IPC could be invoked *qua* a single convict when the co-accused in the same case gets acquitted.

H. Last Seen Theory

xiv. It is submitted by the Id. Counsel that it is settled law that firstly the factum of last seen of the deceased with the accused has to be proved beyond reasonable doubt with cogent evidence, only then the burden under Section 106 of the Indian Evidence Act shifts on the accused to explain the whereabouts of the deceased and his/her role. Further, it is settled law that last seen theory cannot be devised on the basis of hearsay evidence, cryptic and evasive allegations. The live link between the death of the deceased and PW-2's testimony to state that this was the last seen evidence has not been proved by the prosecution. It is submitted that considering the contradictions and infirmities in PW-2's testimony, relying solely on his deposition to support the last seen theory raises several concerns, as PW-2 is not a reliable witness in the present case.



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Reliance has been placed on the following judgements to state the law pertaining to the last seen theory:

a) **Ganpat Singh v. The State of Madhya Pradesh**⁷

b) **Kanhaiya Lal v. State of Rajasthan**⁸

c) **Nizam v. State of Rajasthan**⁹

SUBMISSIONS ON BEHALF OF THE STATE

7. Ld. APP for the State, Mr. Ritesh Bahri has refuted the contentions made by the Id. Counsel for the Appellant by stating the following factors which have led to the conviction of Appellant:

- i. It is submitted by the Ld. APP that the Appellant had sufficient motive to kill her husband Naushad as she was in an illicit relationship with two other individuals, namely Niyaz and Akbar. The Appellant tried to file two missing reports, despite her involvement in the murder of her husband. The entire purpose of filing the two missing reports by the Appellant was to merely mislead the police. Further, Mohd. Farooq, PW-2 has also testified about the prior quarrel that took place between the Appellant and the deceased. PW-2 in his testimony has also mentioned that he had met the Appellant and the deceased while they were coming from the side of the Mool Chand *Basti* as

⁷ (2017) 16 SCC 353 (Para 10)

⁸ (2014) 4 SCC 715 (Para 12)

⁹ (2016) 1 SCC 550 (Para 16)

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also the two other co-accused, Akbar and Niyaz near the “*drum-wala pul*” on the bank of river Yamuna at 10 p.m. on 5th November, 1999, which is, therefore, the last seen evidence in the present case.

- ii. It is further submitted that the Appellant had tried to abscond after the dead body of Naushad was found on 6th November, 1999 and she was finally traced only on 9th November, 1999, thereafter, she was arrested by the Police upon receiving information. Thus, the Id. Counsel submits that conduct of the Appellant also shows that her initial intention was to completely mislead the Police and not to cooperate with them. Mr. Ritesh Bahri, Id. APP also highlights the fact that the Appellant had lodged the missing report at 6.45 a.m. on 6th November, 1999 stating that the deceased was missing from the evening of 5th, November, 1999, since 5 p.m. after leaving the *jhuggi*.
- iii. It is further argued that the Appellant has tried to create a false defense in her favour as per her statement under Section 313 Cr.P.C. by stating that the deceased was not even her husband. Hence, the Appellant has tried to connive that the Police had fabricated the two missing reports. PW-2, Mohd. Farooq and PW-3, Mohd. Sagir have clearly deposed that the Appellant was married to the deceased since one and a half years.
- iv. Learned APP further contends that the testimony of PW-2 is corroborated by the post-mortem report (Ex.PW-1/A) to support the fact that when PW-2 met the Appellant and the deceased at



10 p.m., they had informed him that they had just taken their meal and were going for a stroll towards the Yamuna river.

- v. It is also the case of the prosecution that since the post-mortem was conducted on 8th November, 1999 and the fact that the food had remained completely undigested shows that the last seen evidence is connected to the death of the deceased who appears to be murdered when they were taking a stroll on the banks of the Yamuna river immediately after consuming dinner. The post-mortem report supports the testimony of PW-2 and, thus, the circumstantial evidence is sufficient to convict the accused Appellant.
- vi. It is further stated that the Appellant tried to give an impression to both PW-2 and PW-3 that her relationship was cordial with Naushad on 6th November, 1999 also depicts that the Appellant was merely trying to give a false impression to the said witnesses while having oblique motives.
- vii. It is submitted by the Ld. APP that the mere mentioning of the disclosure statement and the contents of the same in the impugned judgement does not mean that the Ld. Trial Court had relied on the same. The Ld. Trial Court has acted independently on the basis of the evidence which has been brought forth before the Court.
- viii. Finally, it is submitted by Mr. Bahri, Ld. APP that the question relating to *rigor mortis* was not put to PW-1, Dr. K. Goel who



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had conducted the post-mortem and, therefore, no reliance can be placed on the said argument.

ANALYSIS AND FINDINGS

8. Heard learned Counsel for the parties and perused the record.

9. The whole prosecution case, is based upon the theory that the present Appellant was married to the deceased, Naushad, and during the subsistence of the marriage, she got romantically involved with co-accused, Niyaz (since declared Proclaimed Offender). On account of this relationship, it is the case of the prosecution, that the Appellant along with, Niyaz, and his friend, Akbar Shah (since acquitted), acted in furtherance of their common intention to strangle the deceased. The prosecution for the purpose of proving that the Appellant was married with Naushad and that she was having a relationship with Niyaz, have relied upon the testimonies of the following witnesses: -

- (i) PW-2 : Mohd. Farooq,
- (ii) PW-3 : Mohd. Sagir; and
- (iii) PW-6 : Smt. Shama.

10. The case of the prosecution further is based upon circumstantial evidence by way of last seen evidence and for the said purpose, again, the prosecution relies upon the evidence of PW-2 and PW-3.



11. Analysis of evidence of PW-2/Mohd. Farooq

i) PW-2 stated that the deceased was son of his brother-in-law, co-brother (*Sadhu*). He deposed that the deceased was married to the Appellant 1 ½ years ago from the date of his death and was residing with her at *jhuggi*. As per this witness, co-accused, Akbar and Niyaz, were friends of the deceased, who were living in the same locality. This witness states that ten days before 06th November, 1999 (date on which body of the deceased was discovered), the deceased came to him and had told him that co-accused, Niyaz, had developed illicit relationship with the Appellant. To this, PW-2 reverted that he would try and make her understand. He further stated that thereafter, deceased had told him that his wife had told him that Niyaz was like her brother and there was no relationship between the two of them. He further states that on 05th November, 1999, after closing shop at around 10 P.M., he went to meet the Appellant and her husband in order to make her understand. When he reached near “*drum-wala*” bridge (*pul*), near bank of Yamuna, he saw that co-accused, Niyaz and Akbar, were going towards bank of Yamuna. As per this witness, when he went further towards *Mool Chand Basti*, he met the Appellant and deceased, and the deceased told him that he has no danger from the aforesaid co-accused persons and he was living nicely and that they had taken the meal and were going towards river for a stroll. This witness stated that he went back and next day he came to know about a dead body lying at the bank of Yamuna River and at around 01:00 P.M., he and his brother-in-law, Sagir (PW-3), went to see the dead body and identified to be that of Naushad.



ii) The prosecution relies on this aforesaid witness to prove three circumstances, *i.e.*, (a) the Appellant was married to the deceased; (b) the Appellant was having relationship with Niyaz; and (c) that the Appellant was seen last with the deceased as well as the other two accused persons.

iii) Learned counsel appearing on behalf of the Appellant has placed on record by way of written submissions, contradictions in the testimony of the aforesaid witness (PW-2). The same are reproduced as under: -

“Self-Contradictions in the depositions of PW-2.

(xii) He identified the deceased's dead body, inter alia, through the wrist watch worn by deceased. Then the same PW-2 identified the wrist watch at the time of arrest of Akbar who allegedly was wearing the wrist watch of the deceased. Even from the sealed cover, opened in Court and wrist watch shown to him was identified by PW-2 that of deceased Naushad which was being worn by Akbar. Realising his self-contradiction, he then deposed that there was no watch in the wrist of deadbody of Naushad. Again at page 9 of the paperbook PW-2 deposed that he saw accused Akbar wearing watch but was not identified by him. He says that he did not tell the police in his statement about the make of the watch (confronted with his statement Ex 2/DB where it is so recorded).

(xiii) In the cross examination PW-2 deposed firstly that Naushad was living in the Mahalia for 6-7 years then said he was living nearly place for 1-1/2 years.

(xiv) He deposed that he never went to meet Naushad, however Naushad used to come to meet him. **Then he said Naushad met me 10 days back prior to 06-11-1999 and before that day he never met me.**

(xv) PW-2 then deposed that He only met me on 05-11-1999 (it is not clear whether PW-2 is referring to deceased Naushad or Niyaz, to show contradictions/self-contradictions).



(xvi)PW-2 denied that he told police that Naushad told him that Naushad saw his wife with Niyaz in objectionable position, however it is so stated in his statement (on confrontation).

(xvii)PW-2 deposed that from the place where Akbar and Niyaz met him, Shamima and Niyaz met me ahead at a distance of about 100/150 yards. However he then said that Akbar and Niyaz were also coming from the same direction following Shamima and Naushad (this shows that Akbar and Niyaz were following Naushad and Shamima and they were behind Naushad and Shamima. Again at page 9(pdf 13) of the paperback PW-2 says Accused Niyaz and Akbar preceded the deceased and Shamima. The deposition in chief as well as in cross are self contradictory.

(xviii)PW-2 also admits that at that time Naushad had no dispute with Shamima.

(xix)PW-2 at one place says Niyaz and Akbar lived together but at the same time says, he does not know whether Akbar Lived with Niyaz.”

iv) Another circumstance which is noted by this Court is that on 06th November, 1999, an unknown person had informed the Police Post Yamuna *Pushta* at about 10:45 A.M. that a dead body was lying in the bank of river, Yamuna. The said information was duly registered and the SHO of P.S. Kotwali, Insp. Raja Ram, reached the spot where no eye witnesses were found. However, later on the said body was identified as that of Naushad by PW-2 and PW-3, who gave the details of parents of the deceased, and, accordingly, the parents of the deceased were informed. The aforesaid was duly recorded in Ex.PW-18/D (brief facts). Similarly, PW-2 and PW-3 identified the dead body *vide* Ex.PW-2/A and Ex.PW-3/A, respectively. It is pertinent to note that in both these identification memos, these witnesses had identified the deceased and had given details of his village address. This witness



(PW-2), as per the aforesaid records, did not inform the Investigating Officer (PW-21) with regard to the existence of the Appellant being the wife of the deceased. If the testimony of PW-2 is to be believed that he had met the Appellant and the deceased just a night before, then the intimation about the Appellant would have been given to the Police. However, he gave the address of deceased's village in Samastipur, Bihar and in Ex.PW-18/D, Insp. Raja Ram records the fact that the parents of the deceased have been informed. This circumstance definitely creates a doubt on the version of PW-2. Similarly, another grave inconsistency in the testimony of PW-2, is that he has, in his cross-examination, admitted that prior to his death, the deceased had met him ten days prior to 06th November, 1999 (the date when body of the deceased was discovered), and that he had never met him before that day. It is most unlikely that a person, who was otherwise not on visiting terms with someone, would go and confide to such a person about his wife's illicit relationships. Another reason to doubt the testimony of PW-2 is that Insp. Raja Ram, PW-18, in his cross-examination, has stated as under: -

“.....From our local inquiry, the. police intelligence, etc., I suspected the involvement-of Samima, Niaz and Akbar. One Shama lady, met in Mool Chand Basti, who gave information, about; the involvement of the accused persons, in this crime. Shama met me in- Mod Chand Basti for the first time on 6.11.i999. I did not record her statement to this effect- on 6.11.99. She met me at around -3-4 p.m.in Modi Chand basti, when I was making enquiries. There were many persons, but I do not remember their names. PWs Farooq and Sagir met me on the spot. However, I did not visit their jhuggi, but they reside in Yamuna Pusta. It is a big place. I do not remember, if I had enquired from PW Farooq as to whom deceased Naushad was married. I did not come to know in my local inquiry of the spot, as to whom deceased



Naushad was married. Volunteered, but I came to know that deceased Naushad used to reside with Shamima Khatoon. I cannot say, if Shamima Khatoon is not a legally wedded wife of deceased Naushad or not.

I had not sent any of my officials, during the investigation, remained with me, to ascertain, as to whom, deceased Naushad was married. -PW Shama was not known to me, prior to the day, i.e. 6.11.99. So long I remained in the police station Kotwali, no complaint regarding the harassment of the people of the locality, Mool Chand Basti, by PW Shama, came to my notice. I have no knowledge, if the residents of the locality of Mool Chand Basti, had sent a complaint, addressed to DCP North, complaining against PW Shama. I left the charge of P.S. Kotwali, as the SHO on 8.11.1999, on account of the transfer. It is incorrect to suggest that PW Shama is the police informer and is our stock-witness. It is incorrect to suggest that PWs Farooq and Sagir, did not make any statement to me or that I recorded their statements, of my own. It is incorrect that I falsely suspected accused Shamima, Niyaz and Akbar accused. It is incorrect that the accused persons have been falsely implicated in this case.”

(emphasis supplied)

A perusal of the aforesaid testimony of PW-18 would reflect that PW-2 and PW-3 did not inform Insp. Raja Ram about the Appellant and her involvement in the present case was brought to his knowledge by PW-6, Shama. The fact that PW-2 did not inform PW-18, Inspector Raja Ram about the Appellant being the wife of the deceased becomes relevant and the same further shows that PW-2 was a planted witness.

v) Even the contradictions, pointed out by learned Counsel for the Appellant, as recorded hereinabove, further fortifies the conclusion of this Court that no reliance can be placed on the testimony of PW-2 for



either of the three circumstances sought to be proved through the testimony of PW-2.

12. Analysis of evidence of PW-3/Mohd. Sagir

i) The aforesaid witness stated to be the brother-in-law (*Saala*) of PW-2/Farooq and stated that he lives with him only. This witness states that he did not know whether Naushad has told anyone about his wife's illicit relationship with Niyaz, however he had told him. PW-3 also states the same thing as PW-2 that about 10 days prior to 06th November, 1999, the deceased had told about the illicit relationship of the Appellant with Niyaz and that also with co-accused Akbar. This witness deposed on similar lines as PW-2 that on knowing about the dead body, they went together and identified that of the deceased Naushad. This witness further states that the deceased had told him that he could be killed by Niyaz and Akbar.

ii) The aforesaid witness in his cross-examination has contradicted himself on various facts. This witness also, in fact, never met the deceased, Naushad, 10 days prior to 06th November, 1999. The reading of the aforesaid testimony of this witness would reflect that the same is on the lines of PW-2 and strangely the deceased who had never met earlier went and confided to him in respect of his wife's illicit relationship.

iii) Even this witness as pointed out herein before in the identification memo Ex. PW-3/A does not say anything about the Appellant being wife of the deceased Naushad and in view of the



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testimony of PW-18 reproduced hereinbefore, the same parameter would apply to the present witness as well and this witness again in the considered opinion of this Court cannot be relied upon.

13. Analysis of evidence of PW-6/Smt. Shama

i) This witness is stated to have been residing at a distance of 4-5 *jhuggis* from the *jhuggi* of the Appellant. According to this witness, the Appellant was residing with her husband, the deceased, Naushad. As per this witness, she knew co-accused, Akbar and Niyaz, who also used to reside in the *jhuggis* in the *basti* and that she had seen deceased, Naushad, quarrelling with Appellant and there used to be physical fights between them. In her cross-examination, this witness was confronted with her statement under Section 161 of the Cr.P.C. (Ex. PW-6) wherein, the aforesaid fact was not stated. Similarly, this witness was also confronted on various facts narrated in her testimony with her statement recorded under Section 161 of the Cr.P.C. in her cross-examination. In effect, this witness substantially improved upon on her earlier statements given before the Police. In her cross-examination, PW-6 also admitted to the fact that she did not know whether the Appellant was married to the deceased or not. It has also come on record in the testimony of this witness that she is a witness in two cases belonging to P.S. Kotwali and P.S. Darya Ganj. She further admits, in her cross-examination, that she used to inform the police about any happenings in the area to help them.

ii) This witness was cited by the prosecution to show that the Appellant was married to the deceased and that there used to be fights

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between them on account of relationship between the Appellant and the other co-accused person. The reading of the testimony of this witness does not inspire any confidence as she herself has admitted to be a police informer and it can be seen from her cross-examination that she has substantially improved her version and tried to introduce new facts which makes her testimony totally unreliable.

14. The prosecution has, thus, not been able to establish beyond reasonable doubt that the Appellant was ever married to the deceased or that there was any relationship between the Appellant and other co-accused persons. The learned Trial Court acquitted the other accused namely, Akbar Shah, while holding that the prosecution has not been able to prove any motive *qua* the said accused to have committed the crime. It is pertinent to note that, as per case of the prosecution, this accused, Akbar, was seen with the other accused, Niyaz, and the Appellant along with the deceased, the day before his dead body was found. The learned Trial Court has further expressed doubt on the testimony of PW-2 where he had stated that he had seen this co-accused on that day or not. Similarly, the learned Trial Court had disbelieved testimony of PW-6 *qua* the co-accused on the ground that she had improved her version from her previous statements and also recorded that the defence had attributed rivalry between this witness and said co-accused on account of possession of site for construction of *jhuggis*. Learned Trial Court has further disbelieved the recovery of wrist watch of the deceased from this witness. It is pertinent to note that PW-2, in fact, had identified the dead body from the ring, locket and also the watch that the deceased was wearing. It is noted by the learned Trial Court that PW-2 had categorically stated that he had seen



the watch on the dead body of Naushad when police reached there. In these circumstances, the learned Trial Court came to the conclusion that the case of the prosecution regarding the recovery of the watch from this accused, when PW-2 had seen the wrist watch on the dead body of the deceased become highly doubtful.

15. The legal maxim *falsus in uno, falsus in omnibus* is not the rule of law applied by the Courts in India, however, in light of the aforesaid discussions, the fact that the testimonies of these witnesses were discarded by the learned Trial Court for acquitting the other co-accused, Akbar, is a relevant factor as, in effect, the learned Trial Court disbelieved the prosecution version of last seen evidence *qua* the said co-accused. It is pertinent to note that the charge framed by the learned ASJ on 17.05.2000 against the present Appellant along with the co-accused, Akbar, reads as under: -

“.....

That on the night intervening 5-6/1 1/99, at Yamuna Bank, field of Ganga Ram, Indira Colony, behind Vijay Ghat, within the jurisdiction of P.S. Kotwali, you both, alongwith your co-accused Niaz, (a P.O.), in furtherance of your common intention, caused the death of Naushad s/o Mohd. Kalan, by strangulation, and thereby murdered him and committed an offence punishable under Section 302/34 of the IPC and within my cognizance.

And I hereby direct that you be tried by this court under the aforesaid offences.”

Thus, the crux of the prosecution case was that the Appellant along with Niyaz and Akbar in furtherance of their common intention caused the death of the deceased-Naushad by strangulation. As pointed out above, the presence of the Appellant, Niyaz and Akbar as



last seen with the deceased is being sought to be proved by the prosecution through the testimony of PW-2. By discarding the testimony of PW-2 *qua* co-accused, Akbar, the learned Trial Court has disbelieved the main charge of the prosecution. At this stage, it is apposite to refer to the decision of the Hon'ble Supreme Court in **Ugar Ahir and Others v. State of Bihar**¹⁰, wherein, it has been observed and held as under: -

“7. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. **It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.**”

(emphasis supplied)

16. It was argued by learned APP for the State that the fact that Appellant was absconding after the discovery of dead body of the deceased on 6th November, 1999 and she was arrested only on 9th November, 1999 is also a vital link in the chain of circumstances. Similarly, the fact that the Appellant tried to mislead the police by making missing complaints in the morning of 6th November, 1999 is further an additional circumstance pointing towards the guilt of the Appellant. In case of circumstantial evidence, each chain/link has to be established pointing towards the guilt of the Appellant. In the present case, the foundation of the case of prosecution was last seen



evidence which was being proved by way of testimonies of PW-2 and PW-3. As noted hereinabove, the testimonies of the said witnesses are totally unreliable and therefore, the link gets broken. Thus, even if, the contention on behalf of the State is accepted that the Appellant has absconded or she tried to mislead the police, the same would merely raise suspicion and it would not be safe to rely on the same to convict the Appellant. It is the duty of the prosecution to prove their case beyond reasonable doubt.

17. The Hon'ble Supreme Court in **Shailendra Rajdev Pasvan v. State of Gujarat**¹¹, while affirming the judgment of acquittal passed by the Trial Court therein based on the circumstantial evidence, has observed and held as under: -

“13. Thus, the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates twofold requirements:

(i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.

(ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

14. This Court in *Trimukh Maroti Kirkan v. State of Maharashtra* [*Trimukh Maroti Kirkan v. State of Maharashtra*¹², has enunciated the aforesaid principle as under : (SCC p. 689, para 12)

“12. ... The normal principle in a case based on circumstantial evidence is that the circumstances from

¹¹ (2020) 14 SCC 750

¹² (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80]



which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.

(emphasis supplied)

18. The inferences or presumptions can be drawn with the aid of Section 106 of the IEA only if the foundational facts have been proved by the prosecution and in the present case, as already discussed, the said burden has not been discharged by the prosecution. The Hon’ble Supreme Court in **Shambhu Nath Mehra v. State of Ajmer**¹³, while dealing with the applicability of Section 106 of the IEA, has observed and held as under: -

“11. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The



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section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts.”

19. In the totality of the facts and circumstances of the case and in view of the law laid down by the Hon’ble Supreme Court in the aforementioned cases, the impugned judgment of conviction dated 19th January, 2002 and order on sentence dated 22nd January, 2002 are set aside.

20. The present appeal is allowed. The Appellant stands acquitted of the charges levelled against her.

21. Bail bonds stand discharged.

22. Pending applications, if any, also stand disposed of accordingly.

23. Copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance.

24. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

PRATHIBA M. SINGH
(JUDGE)

DECEMBER 12, 2024/bsr

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