



2025:DHC:10563-DB



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

Date of decision: 17th NOVEMBER, 2025

IN THE MATTER OF:

+ **CRL.A. 57/2003**

HARISH

.....Appellant

Through: Mr. Sanjeev Bhatnagar, Mr. Sounak S. Das, Mr. Ansul Kumar, Mr. Manish Kumar Mishra and Mr. Abhijit Bhatnagar, Advocates.

versus

STATE OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP for the State with Insp. Binod Kumar along with SI Vinod Bhati.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant appeal has been preferred by the Appellant/Accused challenging the impugned Judgment and Order dated 21.12.2002 passed by the learned ASJ, New Delhi (*hereinafter referred to as "Trial Court"*), convicting the Appellant for the offence punishable under Section 302 IPC in SC No.01/2001 arising out of FIR No.538/2000 registered at Police Station Mehruali, Delhi and the Order on Sentence dated 06.01.2003, whereunder, the learned Trial Court has sentenced the Appellant to undergo rigorous imprisonment of life and a fine of Rs.200/- and in case of default in payment of fine, a further sentence of rigorous imprisonment of 2 days.



2. Shorn of unnecessary details, the facts leading to the filing of the instant appeal are as under:-

- a) As per the prosecution's case, on 05.09.2000, the deceased, namely Vicky, returned home from a *mandir* and was distributing *prasad*/offerings to his family members. At around 9:30PM, the Appellant visited their house and asked the deceased to come upstairs along with him. The deceased followed the Appellant upstairs to the first floor of the house. Shortly thereafter, a loud gunshot was heard.
- b) Vinod (PW-7), brother of the deceased, rushed to the first floor only to find that the Appellant was holding a black coloured *pistol* and the deceased was lying in a pool of blood. Thereafter, the Appellant immediately jumped from the first floor of the house towards the *gali*, which was adjacent to the deceased's house in order to escape.
- c) The deceased was brought down by Vinod (PW-7), Amit (PW-1) and the neighbours and was rushed to the AIIMS Hospital in a Maruti Van, which belonged to one Anil (PW-4). However, the deceased was declared brought dead.
- d) An FIR bearing No. 538/2000 was registered at Police Station Mehruali, Delhi.
- e) It is the case of the prosecution that the Appellant was arrested by the police on the intervening night of 05.09.2000 and 06.09.2000.
- f) The Appellant was charged for the offence punishable under Section 302 IPC and Sections 25, 27 of the Arms Act, 1959, however, he pleaded not guilty and chose to be put on trial.



- g) The prosecution examined witnesses to bring home their case that the Appellant was guilty of the offence under Section 302 IPC.
- h) The Appellant herein in his statement under Section 313 Cr.P.C stated that he was present in his house and at about 9.30 P.M., when he heard the sound of an explosion, he came out of his house and found that a number of persons rushing towards the house of deceased. He also stated that he also went there. On inquiring, he came to know that the deceased had tried to commit suicide. He then stated that he went upstairs and found PW-7/Vinod and a few other persons there. It is stated that when he enquired from PW-7/Vinod, he told him that in order to commit suicide, the deceased had fired the shot. He stated that Vinod asked the Appellant to help him take the deceased downstairs for being removed to the Hospital. He further stated that the Appellant helped PW-7 in bringing down the deceased from the first floor and that he had also lifted the deceased and they brought him down from the first floor. He also stated that the deceased was then placed in the van of Anil/PW-4 and was sent to the Hospital. The Appellant stated that he went to his house and at about 11 P.M. few police officials came to his house and took him to the Police Station, where he was arrested.
- i) The learned Trial Court came to the conclusion that the Statements of PW-1, 2 & 7, i.e., the statements of the mother and two brothers of the deceased are consistent and believable. The learned Trial Court held that there was no animosity



between the families of the deceased and the Appellant. In the absence of any animosity between the families, PW-1, 2 & 7 had no motive to falsely implicate the Appellant herein. The learned Trial Court held that the consistent stance of PW-1, 2 & 7 is that the accused had come to their residence at about 09:30 PM and had asked the deceased/Vicky, who was distributing *prasad* at that time, to come upstairs with him. The learned Trial Court held that PW-1, 2 & 7 further deposed that there was only one room on the roof and the Appellant along with the deceased went to that room and after few minutes, PW-1, 2 & 7 heard the sound of a shot being fired. PW-7, in his statement, has stated that he saw the Appellant jumping towards the *gali* with a *katta* in his hand. The learned Trial Court disbelieved the case put forth by the Appellant herein that the present case is probably one of suicide. The learned Trial Court held that the wound of gun-shot was on the right side of the chest of the deceased and the Appellant is a left-handed person and, therefore, the case of suicide does not appeal to common sense. Though, the learned Trial Court has discarded the theory of recovery of weapon and has acquitted the Appellant of the charges under the Arms Act, 1959, the Appellant has been convicted on the ground that the prosecution established the following facts:

- i. The Appellant herein was a neighbour to PW-1, PW-2 & PW-7 and there was no enmity between the family of the Appellant and the family of the deceased.



- ii. On the date of the incident, i.e., on 05.09.2000, at about 09:30 PM, the deceased was distributing *prasad* inside his house and the Appellant herein entered the deceased's house and asked the deceased to come to the first floor.
 - iii. There was only one room on the roof and the Appellant herein had gone there and the deceased followed him.
 - iv. That, except the deceased and the Appellant herein, there was no one else in the room on the roof of the house.
 - v. PW-7 had seen the Appellant herein jumping towards the *gali* after hearing the sound of the gunshot.
- j) The Trial Court held that the minor contradiction in the deposition of PW-7 wherein he stated that the Police recorded his statement at the place of occurrence, and the statement of the Investigating Officer that the statement of the PW-7 was recorded at the Hospital, is of no consequence. The learned Trial Court has held that the FIR was recorded at 11:50 PM on 05.09.2000 and was delivered to the Metropolitan Magistrate at 08:00 AM on 06.09.2000. The learned Trial Court further held that the statement of the complainant under Section 161 Cr.P.C, the *rukka* and the FIR contained the name of the Appellant herein and since there was no enmity between the families of the Appellant and the deceased, it was no case of false implication of the Appellant herein. The learned Trial Court, therefore, held that the case of suicide, as put forth by the Appellant herein, was not a probable one. The learned Trial Court also discarded the evidence of DW-1, who had categorically stated that the Appellant herein was with her when



he went to the house of the deceased on hearing a gunshot and that the Appellant herein had helped the family of the deceased in bringing down the body of the deceased from the first floor to the ground floor.

- k) The learned Trial Court *vide* Judgment dated 21.12.2002 convicted the Appellant for offences under Section 302 IPC and by a separate Order on sentence dated 06.01.2003, sentenced the Appellant herein to undergo rigorous imprisonment for life.
- l) It is these orders which are under challenge in the instant appeal.

3. Learned Counsel appearing for the Appellant has primarily urged the following contentions:

- a) No reason has been given as to why the deposition of DW-1 has been discarded by the learned Trial Court. He emphasized that DW-1 has stated that the Appellant herein was with her when he went to the house of the deceased and that she saw the Appellant herein bring down the body of the deceased. He states that nothing has been brought out in the cross-examination of the DW-1 to discard her witness.
- b) As per him, the case of the prosecution is that the Appellant herein had shot the deceased with a *katta* and after firing a shot, the Appellant herein ran away with the *katta*. He states that once the story of recovery of *katta* from the Appellant herein has been discarded by the learned Trial Court, then the case of the prosecution falls.
- c) It has also been contended that the time and the manner of the arrest of the Appellant herein is also not clear. He states that as



per the statement of DW-1, he had stated that the Appellant herein was arrested on the very night of the incident whereas as per the statement of PW-14/Investigating Officer, the Appellant herein was arrested between 04:00 AM to 05:00 AM on the very next day from a tempo stand. He further stated that if PW-7 was accompanying the Police then there was no reason why his signatures were not present on the arrest memo. He drew the attention of this Court to the deposition of PW-7, who had stated that he had accompanied the Police party in search of the Appellant herein and that the arrest was made at about 12:30 AM-12:45 AM. He further stated that as per the statement of DW-1 as well as the statement of the Appellant herein under Section 313 Cr.P.C, the Appellant was arrested from his house. It is, therefore, his case that there is a major discrepancy regarding the time and the place of the arrest of the Appellant herein and the arrest of the Appellant herein in the manner prescribed cannot be accepted.

- d) He also states that since the recovery of the weapon has not been accepted and the Appellant has been acquitted under the Arms Act, 1959, the entire story of the Prosecution that the Appellant had fired from a gun which was with him falls to the ground. Therefore, the case as stated by the Appellant in his statement under Section 313 of the Cr.P.C that it could be either a case of a suicide or a case of scuffle between the brothers gets credence. As such, it cannot be stated that the case against the Appellant has been proved beyond reasonable doubt.



- e) He then draws the attention of this Court to the site map appended at Annexure PW1/A1 showing the place where the room is located and where the incident took place and the place from where the Appellant is alleged to have jumped, to contend that it is impossible for the PW-7 to see as to from where the Appellant herein has allegedly jumped. He states that the possibility of the PW-1, PW-2 and PW-7 to cover up a case of scuffle between the two brothers or the case of suicide to implicate the Appellant herein cannot be ruled out.
- f) He further draws the attention of this Court to a hand written note which is a part of the record being Ex-14/8, allegedly written by the deceased expressing his love towards the sister of the Appellant herein, to contend that the present case can be one of suicide. He states that there is no evidence to show that the Appellant herein at any point of time, disapproved of the relationship between his sister and the deceased and, therefore, the motive of the Appellant herein to kill the deceased is absent.
- g) He also draws the attention of this Court to the first message that was received by the Police Control room which was of a *shor*, i.e. noise/commotion, and not of a death. He, therefore, states that the noise could have been due to the fight between the two brothers which could have ultimately resulted in accidental firing which killed the deceased.
- h) He also submits that this is a case of circumstantial evidence and there is no eye-witness present at the time of the incident. However, it is stated that there were many discrepancies in the evidence and witness testimonies. It has been contended that a



perusal of the witness statements reveals that there is a discrepancy as to the place of recording the FIR i.e., whether the statement was recorded at the hospital or at the house of the deceased. Furthermore, it has been submitted that the prosecution witnesses examined are related witnesses and had tarnished the case of the Appellant since they were interested/related witnesses. Moreover, the testimonies reveal that over 20-30 persons rushed to the deceased's house on hearing the gunshot, however, none of them were examined by the prosecution. It has also been submitted that PW-7 did not reveal the name of the Appellant to either the Doctors or Duty Constable at the time of recording the statement. Therefore, it raises questions on the veracity of the witness testimonies.

4. *Per contra*, learned APP for the State has taken this Court to the deposition of PW-1, PW-2 and PW-7 and states that the testimonies are similar in nature which do not have any major discrepancies. He states that in view of the consistency in the case of the Prosecution, the case against the Appellant has been proved beyond reasonable doubt. He states that it is directly pointed out by the learned Trial Court that the PW-1, PW-2 and PW-7 had no motive to implicate the Appellant and therefore, PW-1, PW-2 and PW-7 cannot be disbelieved.

5. He further states that there is only one room on the terrace. On hearing the gunshot, PW-1, PW-2 and PW-7, who were present on the ground floor, went to the room on the terrace where PW-7 saw the Appellant run with a *katta* in his hand and jump towards the *gali*. He states that the shoes and clothes of the Appellant which have been recovered by the Police



had blood stains on it, which is sufficient to implicate the Appellant in the commission of murder.

6. It is stated that minor contradictions in the testimony of PW-7 and PW-14 regarding the mode and manner of the arrest of the Appellant cannot lead the Court to come to a conclusion that the Appellant was already in the custody of the Police.

7. Heard learned Counsel for the Parties and perused the material on record.

8. The Prosecution has examined 14 witnesses, PW-1 is the brother of the deceased, PW-2 is the mother of the deceased and PW-7 is the other brother who claims to have seen the Appellant holding a *katta* and running away from the scene.

9. PW-1 has testified that the deceased was shot by the Appellant and that PW-1 and PW-7 removed the deceased to the hospital in a Maruti van owned by PW-4. The Police reached the house of the deceased. The deceased was taken to the AIIMS Hospital and the Police went to the AIIMS Hospital wherein according to the prosecution, the statements of PW-1 and PW-7 have been recorded. According to the prosecution, the Appellant had been named in the Hospital itself on the basis of which the *rukka* was sent and the FIR was recorded. PW-2 and PW-7 have also stated their version more or less on the same lines.

10. Amit Kumar, PW-1 brother of the deceased, testified that on 05.09.2000, he along with his father, Vinod, Vicky (deceased) were at their house. In his cross-examination, he deposed that on the date of the incident their father was admitted to ESI Hospital. He also stated that it was only he and his brother, Vinod/PW-7 who removed the deceased to the Hospital. He further stated that the deceased was taken to the Hospital in a Maruti van



owned by Anil (PW-4). After the incident, the Police reached the house 10 minutes after the incident, however, by that time they had taken the deceased to AIIMS Hospital. He stated that he did not inform the Police before leaving the Hospital and it must be the neighbours who had intimated the Police regarding the incident. It is stated that the Police did not reach the Hospital before he reached there. It is stated that he stayed in the Hospital for about 1.5 hours and he met the Police officials there only. He further deposed that his statement was recorded by the Police in the Hospital itself. He further deposed that the family was facing financial crisis, however, he denied that there was any financial pressure on the deceased from his family. He also stated that it is false to assume that the deceased committed suicide due to the financial pressure on him. He also denied that the accused had helped in bringing the body of the deceased from the first floor of the house. He also stated that the reason why his clothes was smeared in blood was because he along with Vinod (PW-7) brought the deceased down.

11. Ms. Dammo, PW-2, is the mother of the deceased, who testified that on 05.09.2000, at around 09:30 PM, the family was having dinner and the deceased came home after offering prayers and distributing *prasad*. Thereafter, the Appellant came to their house and asked the deceased to come upstairs along with him. The deceased followed the accused upstairs and after 05-07 minutes later a gunshot was fired. She stated that upon hearing the gunshot, his son, Vinod/PW-7 went upstairs and he was then followed by Amit/PW-1, Poonam and then the neighbours. It was stated that the deceased was lying in a pool of blood and at that time it was only the deceased and the accused who were present in the room. It is also stated that the deceased was removed to the Hospital by Vinod/PW-7 and Amit/PW-1. She also states that upon hearing a gunshot 20-30 persons have rushed to the



place of incident. She also stated that the deceased was working as a Cable Operator earning Rs.1,700/- per month. She also stated that her family has cordial relations with the accused family and there has been no disputes between them. However, she denied that there was any financial crisis in her family and that the deceased was unemployed or that he committed suicide. She specifically denied that the accused had helped the deceased bring him down the stairs and stated that Harish was not present in the room after she went upstairs.

12. PW-3, SI Madan Lal, went to the deceased's house in order to prepare a site plan on 19.10.2000. He, thereafter, prepared it on 30.10.2001. He deposed that the height of the parapet wall is 1 metre. However, he stated that the *galis* adjacent to the deceased's house were not shown in the site plan.

13. Anil Kumar, PW-4, is the owner of the Maruti van in which the deceased was taken to the Hospital. He stated that in the month of September, 2000, at around 09:30-10:00 PM, Vinod/PW-7 approached him and requested him to take his brother i.e., deceased to the Hospital. He took deceased to AIIMS Hospital, however, he deposed that PW-7 did not tell him as to what had happened to the deceased. It is noted in the testimony that PW-4 has deviated from his Section 161 Cr.P.C statement.

14. Dr. Arun Kumar Agnihotri, PW-5, testified that the dead body of the deceased was brought dead. He deposed regarding the post-mortem results as follows:

“External examination: Rigor mortis was present all over the body. Post mortem staining at back except at pressure points. No sign of decomposition.

Ante-mortem injuries:



1) Fire arm entry wound of size 5.5 cms. x 2.5 cms, over right side of chest in front including midline with abraded collar and tattooing in the area of 26 cms.x 22 cms. around it was 45° from heel, 19° from head, 14 cms. From supra paternal, notch, 3.5 cms. From right nipple and 9.5 cms from left nipple. The track was going downward, backward towards left and piercing body of sternum i.e. 5.5 cms. from lower and of xiphisternus with underneath hematoma, right ventricle of heart, left lobe of lower, posterior of spleen, loop of descending colon and lodged in 10th left intercostal space at back. Bullet was recovered and handed over to the IO.

2. Abrasion of size 1.5 cm x 1 cm. over lateral aspect of left elbow,

Internal examination:- Ribs and chest wall -- as mentioned above

Diaphragma -- lacerated

Both the lungs pale

Heart and pericardial cavity as mentioned above.

Pericardial Cavity contains about 250 ml, blood.

Peritoneal cavity about 1 litre blood.

Liver and spleen -- as mentioned above.

Stomach contained about 250 mg. semi digested food

Mucosa healthy.

Clothing, blood in gauze piece, one handwritten note recovered from the pocket. One locket with black thread. Swab around entry wound and one bullet were sealed and handed over to the IO, with sample seal. Time since death about 14 hrs.



*Opinion In my opinion, the cause of death in this case -
- haemorrhage shock due to fire arm injury which was
sufficient to cause death in ordinary course of nature."*

15. He further opined that the cause of death was haemorrhage shock due to fire arm injury which was sufficient to cause death in ordinary course of nature. Moreover, the death of the deceased was instantaneous and that there was no time gap between the injury and the death.

16. Saurabh Kapoor, PW-6, was the duty Doctor on 05.09.2000. He stated that at 10:24 PM, the deceased was brought dead to the AIIMS Hospital and that he has prepared an MLC of the deceased.

17. Vinod Kumar, PW-7, is a brother of the deceased. He stated that on 05.09.2000 at 09:30 PM, he was present in the house along with his mother/PW-2, Amit/PW-1 and his wife, Suman. He stated that it was a Tuesday night and dinner was being served when the deceased came from a *mandir* and started distributing *prasad* to the family members. He stated that five minutes later the accused came inside the house and asked the deceased to come upstairs along with him. The deceased followed the accused as requested. He deposed that after 05-07 minutes, a gunshot was fired and he immediately ran upstairs only to find that the accused was holding a black coloured pistol in his right hand and jumped on the *gali* adjacent to the house from the first floor. He stated that the deceased was lying in a pool of blood. He also stated that he saw a live cartridge lying in a pool of blood next to the deceased body. Upon seeing his brother dead, he raised an alarm "MAR DIYA, MAR DIYA, HARISH NE MAR DIYA". He stated that upon hearing this Amit/PW-1, his other family members and neighbours rushed upstairs. The deceased was immediately removed to AIIMS Hospital in a Maruti van which belongs to Anil/PW-4. On their arrival at the Hospital, the



deceased was declared "brought dead". He stated that his statement was recorded both at the Hospital and the house.

18. He further testified that on 06.09.2000, he accompanied the Police in searching the accused. On the intervening night of 05.09.2000, the accused was found near Andheria Modh at around 12:30/01:00 AM on 06.09.2000. He stated that he pointed out the Appellant to the Police after which the Appellant was apprehended. He also stated that the Appellant confessed to his act of murder and stated that the *katta* was lying on the roof of his house. Later, the Appellant along with the Police went to the second floor of the Appellant's house where they recovered and sealed the *katta* which was empty. Accordingly, a disclosure statement was given by the Appellant.

19. In his cross-examination, the witness described the outline of the deceased's house. He stated that there are two entrances to the house – one which opened to a *gali* towards the house of *Lacho*, and the other was opened towards another *gali* towards house of *Gulle*. He stated that surrounding the house there were only two *gallis* and there were no other *gallis* other than the ones which were mentioned. He stated that the door towards the house of *Gulle* was closed at the time of incident and that he saw the accused jumped from the first floor towards the said *gali*. He also stated that there is a wooden staircase inside the house. He further stated that when he saw the accused holding the *katta* he was two to three steps outside the room.

20. PW-7 reiterated the deposition of PW-1 and PW-2 to the effect that he along with PW-1 removed the deceased to the Hospital and that the neighbours helped in doing so. He stated that the Police met him in the hospital and had come along with him back to the house. He stated that he assisted the Police in searching the Appellant at around 11:15 to 11:30 PM



and that they searched the accused in Lado Sarai and Andheria Mod. He stated that the Appellant was found to be hiding at around 12:30 to 12:45 AM after which the Police arrested him and that thereafter, they went to the Appellant's house. However, he denied that on 05.09.2000, an altercation took place between his family and that of the deceased.

21. Constable Garib Chand, PW-13 deposed that he accompanied PW-14 to AIIMS Hospital, where the deceased was declared brought dead. He stated that he had taken the statement of Vinod/PW-7 at the Hospital and that at the scene of crime, an empty cartridge was found. However, he again stated that it was not an empty cartridge and that it was a live cartridge. With respect to the place of arrest of the Appellant, he testified that PW-7 accompanied the Police party in search of the Appellant and the Appellant was apprehended from Andheria Modh. He also deposed that the Appellant was taken to his house, wherein *katta* was recovered from the roof of his house, in which a used cartridge was recovered. It was deposed that the shoes and clothes of the Appellant were having blood stains. In his cross examination, he again mentioned that a *khali* (empty) cartridge was recovered, however, again stated that it was a live cartridge which was recovered from the deceased's room. He stated that the blood stains were seen on the soul of the shoes. He also deposed that the distance between the deceased's house and the Appellant's house was around 1.5km or $\frac{3}{4}$ km.

22. PW-14, Inspector Jagdish Meena, in his chief examination, deposed that on the date of occurrence, he received a message stating that there was a quarrel at the deceased's residence, He stated that when he inspected the room, he found a live cartridge in his room. He further stated that the Vinod's statement was taken at the Hospital and that the Appellant was apprehended from Andheria Modh. He also stated that the Appellant



disclosed that the he fired the *katta* and got it recovered from the roof of his house, which was lying underneath the fire wood. In his cross examination, he stated that he did not record any statement of any witness. He also stated that he did not interrogate any neighbours who had come to the scene of crime after hearing the gunshot. Regarding the arrest of the Appellant, he stated that the Appellant was arrested from a Tempo Stand. He stated that the Appellant's house is a single storeyed house from where the *katta* was recovered. However, he also stated that it was wrong to suggest that the Appellant was not arrested from Andheria Modh. He also stated that the Appellant was arrested around 4:00-5:00AM on 06.09.2000.

23. DW-1, Smt. Durga Devi, testified that it was around 9:30PM a gunshot was heard from the deceased's house and people were rushing towards his house. She stated that the mother of the deceased (PW-2) told her that Vicky had done something to himself and was lying unconscious on the floor. She stated that around 50-60 members were present at the scene of crime and that the deceased was lying unconscious. She stated that the Appellant had accompanied the deceased in removing him from the room and he was one of them to lift the Appellant and take him down. She stated that the deceased was removed in Anil's Van. She stated that around 35 minutes later, a PCR came and arrested Appellant from his house. She stated that the Appellant was arrested around 10:30PM.

24. After examining the testimonies of the witnesses herein, it is observed by this Court that there are various discrepancies in the prosecution's case, which are as follows:-

1. As per the testimonies of PW-1, PW-13, PW-14 the statement for recording of the FIR was at the Hospital, however, as per PW-7, the statement was recorded at the deceased's house.



2. The time and place of arrest as per PW-7 is around 12:30AM/1:00AM of 06.09.2000, whereas as per PW-14, it is around 05:00 AM on 06.09.2000.
3. The testimony of PW-14 states that he received an initial information about a quarrel taking place at the deceased's house. However, there is no mention of any details in any of the testimonies, nor were they discussed by the learned Trial Court in the impugned Judgment.
25. The above are major discrepancies which are fatal to the case of the Prosecution as it is doubtful as to where the statement for FIR was recorded i.e., at the deceased's house or at AIIMS Hospital as also regarding the time of arrest as well. Though PW-7 stated that the time of arrest was around midnight i.e., intervening night of 05.09.2000 and 06.09.2000, the Investigating Officer instead stated that the arrest was somewhere around 4:00AM - 5:00AM of 06.09.2000.
26. Apart from the discrepancies there are a few other factors also. The evidence of DW-1 has not been considered by the learned Trial Court. DW-1, in her unrebutted statement, has categorically stated that the Appellant was with her and was arrested from the house of the Appellant on that very day i.e., 05.09.2000 at about 10.30 PM. Nothing has been established as to why DW-1 should be giving a false statement as there is nothing in the cross-examination which shakes the veracity of DW-1. It was also stated that the Appellant had accompanied her and she saw the Appellant assisting the family in bringing the body down.
27. The fact that there is material on record that indicates that there is blood on the Appellant's clothes and on the sole of his shoes leads to an inference that the Appellant was indeed assisting the deceased's family in removing the body of the deceased downstairs. Had the accused only shot



the deceased and ran from the place, the chances of blood on the shoes was exceedingly remote. There is no possibility of the Appellant running over the pool of blood of the deceased in the manner in which the offence has been shown to have been committed.

28. The initial information which was received by the Police was one of *shor* and not of commission of murder, thereby raising a reasonable doubt in the mind of this Court that the two brothers i.e., the deceased and PW-7 would have ended in a quarrel resulting in the death of the Appellant and that the family was only trying to cover up the real cause of his death. It also indicates that the possibility of PW-7 seeing the Appellant run with his *katta* and jumping from the deceased's room is also remote.

29. The present case is one of circumstantial evidence. PW-7 cannot be said to be an eye-witness because he has not seen the Appellant firing the gun.

30. The recovery of the gun has been denied by the learned Trial Court.

31. DW-1 has categorically stated that the Appellant was with her and helped in bringing the body down which is in line with the statement made by the Appellant under Section 313 of Cr.P.C. The story regarding the recovery of the gun has been disbelieved. If the statement of DW-1 is to be believed, then the possibility of shoes and clothes consisting blood while getting the body down cannot be ruled out.

32. It turns out this is a case of circumstantial evidence and for which the entire chain has to be complete. The discrepancy as to whether the statement for FIR was recorded at the deceased's house or at AIIMS Hospital is also an important factor which is to be kept in mind. If the FIR was recorded at home, the possibility of the deceased's family covering up the incident by



implicating the Appellant and the documents being ante-timed to show that the statement was recorded at the Hospital cannot be ruled out.

33. The learned Trial Court had completely ignored the testimony of DW-1, who concurs with the story of the Appellant. Moreover, unlike PW-1, PW-2 and PW-7, DW-1 is a neutral and independent witness. Therefore, factually there is nothing incriminating leading to the conviction of the Accused.

34. Furthermore, the learned Trial Court had repeatedly mentioned that the motive is not the sole factor for acquitting the Accused and if the surrounding circumstances showcase that the offence is likely to have committed by the Accused, motive is not necessary. However, the evidence must be reasonable enough to complete the chain of events, especially when there is no eye-witness present at all. The Apex Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 held as under: –

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

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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



‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

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

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

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

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”*

35. In the case of Padala Veera Reddy v. State of A.P., 1991 SCC (Cri) 407, the Apex Court reiterated the significance of establishing the chain of events in circumstantial evidence as follows: –

“10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held 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. (See Gambhir v. State of Maharashtra [(1982) 2 SCC 351 : 1982 SCC (Cri) 431] .)”

36. Similarly, the Apex Court had also reiterated the foregoing principle in the case of G. Parshwanath v. State of Karnataka, (2010) 8 SCC 593, which reads as under –

“23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these



inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”

37. The aforesaid establishes that it is a well-settled principle of criminal jurisprudence that the case must be proven beyond reasonable doubt. However, the foregoing list of discrepancies show that the prosecution has failed to prove their case beyond reasonable doubt and the conviction should not be given based only on the story of the prosecution, as it has been



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reiterated times without number that the Courts cannot blindly assume the story of prosecution and must weigh it with the evidence on record.

38. The learned Trial Court, while passing the impugned Judgment did not appreciate the case of the Appellant by failing to detect the apparent discrepancies in the witness testimonies and material on record.

39. Therefore, legally also this Court is of the considered view that the Appellant herein i.e., Harish is not guilty of the offence under Section 302 of the IPC.

40. Accordingly, the instant appeal is allowed. Pending applications, if any, are disposed of. The Appellant - Harish is hereby acquitted as such.

41. The bail bonds are discharged.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

NOVEMBER 17, 2025
SM