



2026:DHC:8274-DB



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

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CNR No. DLHC010513472005
+ **CRL.A. 72/2005**
HASMAT ALI

.....Appellant

Through: Mr. Mohd. Nasir, Mr. Tabrez,
Mr. Javed, Mr. Saad, Advocates
with appellant in person.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the
State with Mr. Manvendra
Yadav, Advocate with Insp.
Abhijit Kumar, PS-Seelampur.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present appeal has been filed by the Appellant Hasmat Ali against the judgement of conviction dated 22.03.2004[“**impugned judgement**”] and order on sentence dated 25.03.2004 passed by the learned Additional Sessions Judge[“**Trial Court**”] in SC no.115/2000 in case FIR no. 12/2000 registered under Section 302, 364 of the Indian Penal Code, 1860 [“**IPC**”], Police Station [“**P.S**”] Seelampur.

BRIEF FACTS:

2. The prosecution case, as set out in the impugned judgment, is that the appellant, Hasmat Ali used to work with the deceased Mohd. Hanif. On 09th January, 2000, Smt. Husan Bano, the wife of the



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deceased, lodged a missing report of her husband at PS Seelam Pur. In the said report, she stated that her husband was taken away by Hasmat Ali on 31st December, 1999 at about 12.00 noon on the pretext that they were to go to Jaipur in connection with some work. When her husband Mohd. Hanif did not return back, DD No. 6-A dated 09th January, 2000 (Ex. PW-1/A) was recorded. The same was assigned for investigation to SI Virender Kumar Bagoti (PW-25), who along with Constable Santosh (PW-15), reached at the house of complainant Husan Bano and recorded her statement. On the basis of such statement, an FIR was registered under Section 364 IPC (Ex. PW-3/A).

3. PW-25 interrogated Habib, the son of the complainant. It came to notice that Hasmat Ali was residing at Ranjeet Nagar. PW-25 along with Constable Santosh went at the house of Hasmat Ali at Ranjeet Nagar, from where, he was arrested. Upon interrogation, he gave disclosure statement (Ex. PW-25/A), wherein, he confessed to have murdered Mohd. Hanif in the area of Bulandshahar, U.P. He disclosed about the place where he had thrown the dead body.

4. On 11th January, 2000, the police team took Hasmat Ali and the son of the deceased at Kotwali, Bulandshahar. There they came to know that the dead body of one person was recovered on 02nd January 2000 from the fields of Khachera, behind Shilkarpur, Bus Stand, New Faislabad, Bulandshahar, U.P. and that the said body had not been identified and was buried after getting conducted the post-mortem. It was also revealed that the clothes and the photographs of the body were deposited in the concerned *Malkhana*.



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5. The clothes of the deceased and one pair of “jutti” of yellow colour were taken out from the *Malkhana* from a sealed parcel and was shown to the son of the deceased. The son of the deceased identified the body to be of his father on the basis of the photographs and clothes shown to him. Appellant Hasmat Ali then led the police party to the place where he had thrown the dead body. Constable Rajender (PW-21), from the concerned police station, also joined in the police party to the place of burial, where the grave of the deceased was pointed out.

6. Hasmat Ali was brought back to Delhi. Upon further interrogation, he named Mohd. Iqbal to be his partner in the crime. Statements of witnesses were recorded, including that of one Yasin, who disclosed about the extra-judicial confession made by Hasmat Ali regarding the murder of Mohd. Hanif.

7. During investigation, police came to know that Hasmat Ali was working with the deceased Mohd. Hanif, but failed to keep proper accounts of the payments collected by him from Jaipur. He had taken the deceased Mohd. Hanif with him 01st January, 2000 on the pretext to get the payments from the shopkeepers at Jaipur. However, they did not go to Jaipur. During this period, Hasmat Ali used to make telephone calls, telling the family members of the deceased that the deceased would return soon. When the deceased did not return for about eight days, his wife Husan Bano suspected the involvement of Hasmat Ali in the commission of the crime and ultimately lodged a report with the police. After his arrest, Hasmat Ali confessed his guilt and pointed out the place where he had thrown the dead body of the



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deceased. The body recovered by the police at Bulandshehar on 02nd January 2000 was connected in this case to be that of deceased Mohd. Hanif.

8. Upon completion of investigation, charge sheet was filed against the appellant Hasmat Ali and co-accused Mohd. Iqbal.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT:

9. The learned Trial Court framed charges under Section 302/34 IPC against the appellant and co-accused Mohd. Iqbal. A separate charge under Section 364 IPC was also framed against the appellant Hasmat Ali. The appellant and the co-accused Mohd. Iqbal pleaded not guilty and claimed trial

10. In order to bring home the guilt of the accused persons, the prosecution examined a total of 25 witnesses including the wife (PW-2), sons of the deceased (PW-5/6 and PW-7), the Dhaba owner Mukut Lal (PW-9), brother-in-law (PW-11) and Father-in-law (PW-23) of the deceased, witness to the extra-judicial confession, Mohd. Yasin (PW-13), police officials from Bulandshahar (PWs- 18, 20, 21 and 24) and the Investigating Officers of the case, Inspector Rajender Gautam and SI Virender Kumar (PW-16 and 25).

11. After the completion of the prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C."), wherein they denied all the incriminating evidence appearing on record against them. The stand of the appellant was that he was falsely implicated in the present case. It was stated that PW-12 Aslam, who appeared as a witness in the present case, had enmity with the co-accused Iqbal, as



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his son had divorced the daughter of PW-12 Aslam's sister. It was further stated that, at the instance of PW-12 Aslam, a criminal case under Section 498-A IPC had been registered against the family members of accused Iqbal at Bulandshahar, UP. He preferred not to lead any evidence in his defence.

12. The learned Trial Court, *vide* impugned judgment dated 22nd March, 2004, convicted the appellant Hasmat Ali under Section 302 IPC, but co-accused Mohd. Iqbal was granted benefit of doubt and was acquitted. *Vide* order dated 25th March, 2004, the appellant Hasmat Ali was sentenced to undergo imprisonment for life with fine of Rs. 500/-, and in default of payment of fine, he was awarded Simple Imprisonment for a period of one month under Section 302 IPC.

13. The learned Trial Court was of the view that the dead body recovered on 02nd January 2000 was established to be that of deceased Mohd. Hanif on the basis of the identification from the photographs Mark X & Y and the clothes Ex. P-1 to P-5, which the deceased was wearing at the time of incident. The learned Trial Court also concluded that Mohd. Hanif had met with homicidal death and the material on record fully establishes the employment of the appellant with the deceased prior to the occurrence. The learned Trial Court believed the evidence of last seen, observing that the prosecution has examined several witnesses to prove the same and that they had no motive to falsely implicate the appellant and to let the real culprit go scot-free. The learned Trial Court was of the view that the discovery of the place where the dead body was thrown by Hasmat Ali and



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identification of dead body by PW-6 Habib on seeing the photographs and clothes of the dead body recovered on 02nd January, 2000 are material circumstances to connect Hasmat Ali with the commission of murder. The learned Trial Court observed that the appellant had failed to account for the payments collected by him on behalf of the deceased and therefore had the motive to commit the offence. With regard to the conduct of the appellant, the learned Trial Court was of the view that Hasmat Ali was found present at his residence on 09th January, 2000. He did not explain where he remained present in between 01st January, 2000 and 09th January, 2000. He did not produce any witness to show his presence at any other place, that is, at his residence or at his place of job during this period. Nothing was found on record to show that Hasmat Ali used to do any specific job at a particular place during this period. This concealment of material fact by Hasmat Ali was taken as an unnatural conduct. The learned Trial Court, however, disbelieved the circumstance of extra-judicial confession. Notwithstanding the same, the learned Trial Court concluded that the circumstances established on record by the prosecution proved the guilt of Hasmat Ali in the commission of murder. Non-explanation of the proved facts was considered as an additional link in the chain of circumstances to connect Hasmat Ali with the commission of the offence, and accordingly, the finding of conviction was returned against the appellant.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

14. The learned counsel for the Appellant submitted that prosecution has failed to establish a complete and unbroken chain of



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circumstances, pointing towards the guilt of the appellant. It was submitted that the identification of the deceased was itself doubtful. The body remained unidentified at the time of recovery and was buried as an unclaimed body. However, on 11th January, 2000, the same was identified only on the basis of the photographs and the clothes. It was submitted that Avdesh Kumar (PW-14), who conducted the post-mortem examination, deposed that the deceased was a clean shaven man. The photographs Mark 'X' and Mark 'Y' also show that the deceased was a clean shaven man. However, according to PW-2 and other witnesses, including the sons of the deceased, Mohd. Hanif was having beard. The learned counsel submitted that this inconsistency was significant in the context of the prosecution case, particularly, when the body had initially remained unidentified and unclaimed and was subsequently identified primarily on the basis of the photographs and the clothes.

15. It was further argued that the missing complaint was lodged by PW-2 only on 08/09th January, 2000, that is, after a substantial delay of about eight to nine days from the date of the alleged disappearance, without any satisfactory explanation for such delay. It was further argued that the medical evidence does not corroborate the manner of death, as the post-mortem doctor, PW-14, attributed the death to coma, resulting from the ante-mortem injuries and opined that Injury No. 4, a contusion on the left side of the head, was sufficient to cause death, with no ligature mark or other characteristic injury of strangulation having been noted, whereas, appellant Hasmat, in his disclosure statement, stated that he had strangled the deceased with



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his *lungi*.

16. It was further argued that the prosecution case suffers from material contradictions with regard to the date of disappearance of the deceased and the circumstances in which he allegedly left his house with the appellant. PW-2, wife of the deceased, deposed that the appellant had taken her husband to Jaipur for business purposes on 01st January, 2000, whereas, in DD No. 6-A, lodged by her, such date was stated to be 31st December, 1999. The learned counsel contended that this discrepancy was not a minor inconsistency, but goes to the root of the prosecution case, concerning the last occasion on which the deceased was seen with the appellant.

17. It was further submitted that as per the prosecution version, the appellant committed the murder of the deceased with his *lungi*. However, the said *lungi* was neither seized nor recovered during investigation, and thus, the alleged weapon of offence is not recovered.

18. It was further argued that there are other contradictions as well in the testimonies of the witnesses, inasmuch as, PW-2 stated that she went to PS Saleempur on 09th January, 2000, but did not state that Aslam (PW-11) or any other person accompanied her, while PW-11 claimed that he and Alladiya (PW-23) had accompanied PW-2 to the police station for lodging the missing complaint of Mohd. Hanif.

19. The learned counsel further submitted that the prosecution witnesses were inconsistent even with regard to the persons who allegedly accompanied the police and the appellant to Bulandshahar on 11th January, 2000. PW-5/6 Mohd. Habib stated that he had



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accompanied the appellant and the police, whereas, PW-23 Alladiya deposed that he, Farooq and Habib had accompanied the police and the appellant to Bulandshahar. Mohd. Habib did not mention about Farooq or PW-23 in his statement. Farooq, the brother in law of the deceased, is neither cited nor examined as a witness in this case. The learned counsel contended that these contradiction/inconsistencies are of utmost importance because the prosecution sought to rely upon the alleged disclosure and subsequent recovery to establish the appellant's involvement.

20. As per the stand of the prosecution, the appellant used to make STD calls to the family of the deceased at a PCO booth belonging to one Salim to mislead the family of the deceased, however, Salim was neither examined nor produced as a witness, thereby, leaving this circumstance wholly unsubstantiated.

21. As regards the alleged motive, it was submitted that the prosecution sought to attribute misappropriation of money to the appellant on the premise that he was working for the deceased as money collector. However, no evidence was adduced to establish that the appellant was employed by the deceased, collected money from his customers or had misappropriated the same in any manner. The investigating agency failed to identify, examine or produce any of the customers of the deceased, and thus, no evidence has been brought before the Court to establish the motive.

22. It was further submitted that as per prosecution case and the testimonies of PW-25 and PW-5/6, the appellant Hasmat Ali led the police party to the place where he had disposed the body after



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committing the murder and pointing out memo was prepared at his instance. However, the veracity of the evidence of identification of the site and the pointing out memo at the instance of the appellant has a weak evidentiary value, because by that time, the body had already been recovered by the police officials at Bulandshahar and therefore, the place of recovery of body was already known.

23. It was further submitted that the learned Trial Court rightly disbelieved the alleged extra-judicial confession, purportedly made by the appellant to PW-13 Mohd. Yasin and therefore, the same could not be relied upon to connect the appellant with the commission of the murder. It was also contended that the evidence of last seen is also not reliable and moreover the same is only weak kind of evidence and cannot be relied upon without corroboration, which is not available in the present case.

24. Accordingly, it was submitted by the learned counsel that the prosecution has failed to establish the alleged motive, the last-seen circumstance, the manner of death, the identity of the deceased with certainty, the alleged disclosure and the recovery in a legally reliable manner. The alleged extra-judicial confession had already been disbelieved by the learned Trial Court, while the remaining circumstances were either unsupported by independent evidence or suffered from material contradictions. It was thus submitted that prosecution has failed to prove the complete chain of circumstances beyond reasonable doubt and therefore, the appellant was entitled to such benefit.

SUBMISSIONS ON BEHALF OF THE STATE:



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25. *Per contra*, the learned APP duly supported the judgment passed by the learned Trial Court, stating that the learned Trial Court duly appreciated the evidence on record and recorded a well reasoned finding convicting the appellant/accused. He submitted that the case is based on circumstantial evidence and that the circumstances proved by the witnesses lead to an irresistible conclusion that it is the appellant who committed the murder.

26. It was submitted that PW-2 Husan Bano and PW-9 Mukut Lal are the witnesses of last seen evidence with PW-9 being an independent witness, having no reason to falsely implicate the appellant. The learned APP submitted that PW-9 being an independent witness, his testimony deserves due weight. He further submitted that the testimony of PW-7 to the effect that he had gone to the *Dhaba* in search of his father in order to accompany him, also finds corroboration from the testimony of PW-9.

27. The learned APP further submitted that the prosecution has been able to establish the motive behind the occurrence, and in this regard, placed strong reliance on the testimony of PW-10 Mohd. Tahir, who stated that he knew the deceased Hanif and had worked with him for about 20-27 days prior to Diwali in the year 1999. He further stated that after Diwali, he left the said work, as Hasmat had started working with Hanif.

28. As regards the alleged contradictions and omissions in the testimonies of the prosecution witnesses, it was submitted that the same are minor in nature, and thus, cannot enure to the benefit of the appellant, when the substantive evidence otherwise establishes the



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prosecution case. It was further submitted that the defence theory regarding PW-12 Aslam and PW-13 Mohd. Yasin, being responsible for false implication of the appellant, is not established during the trial and no material has been brought on record to demonstrate any prior enmity or circumstance, which could furnish a reason for the prosecution witnesses to falsely implicate the appellant.

29. It was further submitted that prior to the disclosure statement of the appellant, Delhi Police had no knowledge regarding the recovery of the body by the Bulandshahar Police on 02nd January, 2000 or with regard to the place of such recovery and this information came to their knowledge only pursuant to the statement made by the appellant. Thus, the portion of the disclosure statement which has resulted in discovery of the aforesaid fact is admissible in evidence and is a strong circumstance against the appellant.

30. The learned APP further submitted that the conduct of the appellant constitutes an additional incriminating circumstance, and in this regard, he placed reliance on the testimonies of PW-2 Husan Bano and PW-11 Aslam, brother in law of the deceased, who stated that the appellant used to contact the family of the deceased and mislead them regarding the whereabouts of Mohd. Hanif. According to him, non-examination of the PCO owner is also not fatal to the prosecution case.

31. The learned APP thus contended that the identification of the recovered body, the conduct of the appellant, coupled with the motive, the last-seen evidence, the disclosure statement and the pointing out proceedings form a complete and incriminating chain of



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circumstances pointing towards the guilt of the appellant. According to him, the minor contradictions or omissions relied upon by the defence are insufficient to dislodge the prosecution case, and thus, prayed that the appeal be dismissed and the conviction and sentence of the appellant be upheld.

ANALYSIS AND REASONING:

32. We have considered the rival submissions and have given our anxious consideration to the same and have perused the material on record.

33. In a case of murder, the identification of the body is of utmost importance. As per the prosecution case, the first information regarding the discovery of body from a vacant plot at Faisalabad, within the jurisdiction of PS Nagar Kotwali, Bulandshahar, was passed on to SHO, PS Nagar Kotwali, Bulandshahar by one Swaleheen @ Swale (PW-22) *vide* document Ex. PW-22/A. PW-22 during his deposition before the Court, identified his handwriting and signatures on Ex. PW-22/A, and during cross examination by the learned APP, he admitted that the contents of the said application were written by him, the same being the facts. However, he also stated that he had not seen the dead body lying there before the police met him.

34. PW-18 SI Ramvraksh Verma, who was then posted at Police Station Nagar Kotwali, Bulandshahar, deposed that on 02nd January, 2000, at about 12.40 am, GD No. 28 (Ex. PW-14/A) was recorded by GD Writer regarding a dead body lying on a vacant plot near the field of Khachera, Faisalabad, near Siana Bus Stand, Bulandshahar, and on receipt of the same, he along with Constable Rajender Singh (PW-21)



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and Satyapal (PW-24) reached at the place of recovery of the body. Upon inspection, the age of the body was found to be about 45 years. The body was wearing safari suit of *Saleti* colour, one jersey and Rajasthani shoes with socks. At that time, the face of the body was clean shaven. He deposed that he had the body photographed. All possible efforts were made for the identification of the body, but without any success. Thereafter, the inquest form (Ex. PW-14/A-2) was filled up and the body was sent to the mortuary for post-mortem. He further deposed that the dead body was unclaimed and therefore, the same was buried by the authorized community/committee. The clothes of the deceased, post-mortem report and other exhibits were deposited at PS Nagar Kotwali, Bulandshahar by Constable Rajender and Satyapal.

35. Constable Rajender Singh and Constable Satyapal Singh were also examined as PW-21 and PW-24 respectively. They also deposed about the recovery of an unclaimed body and the factum of taking photographs Mark 'X' and Mark 'Y', preservation of the clothes of the deceased in a sealed parcel and the burial of the body. Thus, the testimonies of PW-18, PW-21 and PW-24 prove the recovery of an unidentified and unclaimed body from a vacant plot near the field of Khachera, Faisalabad, near Siana Bus Stand, Bulandshahar on 02nd January, 2000.

36. PW-18 SI Ramvraksh Verma deposed that on 11th January, 2000, one SI and ASI of Delhi Police, accompanied by the appellant Hasmat and the son of the deceased came, and the son of the deceased had identified the photograph and claimed that the dead body was of



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his father. He also identified the clothes of the deceased and claimed that the same were of his father.

37. PW-17 SI Santosh Kumar also deposed about this fact, stating that on 11th January 2000, he along with ASI Virender Singh Bargoti, Constable Santosh Kumar, along with Habib (PW-6) and accused Hasmat had gone at Nagar Kotwali, Bulandshahar Police Station, where firstly, the arrival entry was recorded by ASI Virender Singh and there it came to their notice that one dead body had been recovered in the area of jurisdiction of Nagar Kotwali and that the same was buried in the burial ground after post-mortem as an unclaimed body. He further deposed that some photographs of the deceased and a sealed parcel and *jootis* were produced, and on opening of the seal parcel, one jersey, one pant and shirt of safari suit, one pair of *Pathani jootis* and one pair of socks were taken out, which were identified by the deceased's son Habib, as belonging to his father. He further deposed that Habib also identified the body of his father from the photographs Mark 'A' and 'Mark B'.

38. The testimonies of Constable Santosh Kumar (PW-15) and SI Virender Singh Bargoti (PW-25) are also more or less similar. According to PW-25, Habib had moved a written application before the senior police officers, Nagar Kotwali, Bulandshahar (Ex. PW-6/B) and thereafter two photographs of the dead body and one shirt safari, pant, pair of socks, one pair of *jootis* of yellow colour were shown after opening the sealed parcel, and on seeing the above said clothes and the photographs, Habib identified the body of his father.

39. PW-6 Mohd. Habib, son of the deceased Mohd. Hanif,



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corroborated the testimonies of PW-17, PW-18 and PW-25 by confirming that he was shown the clothes of his father and the photographs at PS Nagar Kotwali, Bulandshahar, and he identified the same.

40. The identity of the deceased has been challenged mainly on the ground that in her statement, PW-2 described Mohd. Hanif as a person having a beard, whereas, the photographs of the recovered body depict that it was of a clean-shaven person, which is also consistent with the description given in the post-mortem report. PW-2 Smt. Husan Bano, in her cross examination, stated that her husband was of normal health. He was of wheatish colour. He was having medium built and used to keep beard. He used to keep short hair on his head with all his teeth intact. He was not having any visible mark or mole. Except for the beard, the aforesaid description, narrated by PW-2, more or less matches with the description noted by Dr. Avdesh Kumar (PW-14) in the post-mortem report Ex. PW-14/B. He noted that the length of the body was 5 feet and 4 inches, sole was 9 inches, scalp hair were 3 inches black and he was clean shaven. He also noted that at the time of post-mortem examination, jersey, safari suit (pant & shirt), one pair of *jooti* and one pair of socks were found on the body and the same were converted into a sealed parcel and handed over to the concerned Constable after post-mortem examination. The said clothes were identified by PW-6 Mohd. Habib on 11th January, 2000 at PS Nagar Kotwali, Bulandshahar, to be belonging to his late father.

41. Importantly, prosecution also examined Aslam (PW-12), who deposed that he was running a *parchoon* shop at Bulandshahar and



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that on 01 January, 2000, he had seen three persons, including the appellant, whom he identified in Court, walking with a man having beard and was moving in an incoherent manner. He further stated that on the following morning, at about 6:00 am, despite dense fog and severe cold, he noticed a commotion and went to the spot, where he saw a dead body, which was clean-shaven and had fresh blade marks on the face, appearing as if these marks occurred while shaving the person. PW-12 stated that he was unable to identify the deceased. The presence of fresh blade marks on the face of the deceased assumes significance, as it provides a plausible explanation about the absence of beard on the body. There is a possibility that the beard had been shaved off after the occurrence, with the objective that the body remained unidentified.

42. Moreover, the identification of the deceased was not based solely on the photographs but also from the clothes, preserved by the Bulandshahar Police. PW-6 identified the clothes to be belonging to his father Mohd. Hanif. The photographs Mark 'X' and Mark 'Y' are sufficiently clear for the identification of the body by the near and dear ones. It is improbable that the close relatives of the deceased would falsely identify the dead body of someone else to be that of the deceased Mohd. Hanif. Since the body was identified by PW-6 Mohd. Habib on the basis of the photographs and the clothes, there was no necessity to dig out the dead body for the purpose of identification. Even if the body had been exhumed so many days after the death, it would not have served any purpose, because by that time, the body would have got decomposed beyond recognition. The learned Trial



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Court rightly recorded that sometimes religious sentiments also compel the police not to take such extreme steps and there is nothing on record to show that the dead body belonged to some other person.

43. Therefore, the mere fact that the recovered body was clean shaven, in the face of the evidence regarding the presence of fresh shaving marks and other circumstances connecting the body with Mohd. Hanif, cannot by itself create a reasonable doubt regarding the identity of the deceased.

44. The appellant has challenged the prosecution narrative regarding the cause of death, inasmuch as, the post-mortem report Ex. PW-14/B records that Injury No. 4, namely, a contusion measuring 5 cms × 2 cms on the left side of the head, 3 cms above the left ear pinna, to be sufficient to cause death, whereas, the prosecution stand is that the appellant strangled the deceased with his *lungi*. This contention, however, does not displace the finding that the deceased had suffered a homicidal death. PW-14 Dr. Avdesh Kumar, who conducted the post-mortem examination, found four ante-mortem injuries on the body and opined that the death was due to coma resulting from the said injuries, with Injury No. 4, being sufficient in ordinary course to cause death. In his cross-examination conducted on behalf of co-accused Iqbal, he stated that Injuries No. 1 to 4 were caused by a blunt object and were approximately 1 ½ days old. Significantly, PW-14 was not cross-examined on behalf of the appellant Hasmat Ali with regard to the cause of death or regarding the opinion that the death was homicidal. No suggestion was put to the doctor that the deceased had not suffered a homicidal death. It must



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not be lost sight of that the cause of death being strangulation with *lungi* was based on the disclosure statement of the appellant, which may have been made only to mislead the prosecution. It is even otherwise irrelevant as the fact remains that Mohd. Hanif died a homicidal death and the cause of death proved by the medical opinion remains unchallenged.

45. Admittedly, the prosecution case is based on circumstantial evidence, there being no eye witness of the occurrence.

46. The first circumstance relied upon by the prosecution is that the appellant was employed by deceased Mohd. Hanif about four months prior to the occurrence. In his statement under Section 313 Cr. PC, the appellant denied this fact. PW-2 Smt. Husan Bano, wife of the deceased, deposed in her testimony that about four months prior to the incident, the appellant had told her husband “*Mujhe Sar Chhipane Ke Liye Jagah Chahiye*”. The deceased told the appellant that he could work with him and thereafter the appellant started working with the deceased at Maujpur, and on his request, he was deputed to look after the business of her husband at Jaipur. She further testified that the appellant worked at Jaipur for about one month prior to the incident and the deceased used to send jackets to Jaipur to the appellant. She further deposed that the appellant used to collect payments from the customers at Jaipur and that on her visit along with her son to Jaipur prior to the occurrence, the appellant had given Rs. 15,000/- to her out of the amount collected by him. During cross examination, PW-2 stated that besides Jaipur, goods also used to be sent to Dehradun. She denied the suggestion that the appellant had never worked with her



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husband.

47. PW-6 Mohd. Habib also deposed that the appellant used to work with them. He stated that initially, the appellant used to work at Delhi, and later on, worked with his father at Jaipur. According to him, the appellant used to collect payments from the parties. In cross examination, there is not even a suggestion that the appellant never worked with the deceased either at Delhi or at Jaipur.

48. PW-10 Mohd. Tahir is the witness who was earlier employed with the deceased, and on the appellant joining the deceased, he left the job. He deposed that he worked with the deceased for about 20-27 days and left the job as the appellant had started doing the work with Mohd. Hanif.

49. PW-11 Aslam, brother in law (*Bahnoi*) of the deceased, deposed that Hasmat was well acquainted to him because he was a worker in the “*Karkhana*” of Hanif. There is no cross examination of PW-11 with respect to the aforesaid deposition. Similarly, PW-23 Alladiya, father in law of deceased Mohd. Hanif, deposed that the accused Hasmat was working with his son in law Mohd. Hanif for a period of about five months prior to his death and used to remain with the deceased while going to and coming back from Jaipur in connection with manufacture and sale of jackets. No question or even a suggestion was put to the contrary in cross examination of this witness.

50. In cross examination, PW-2, PW-6, PW-10, PW-11 and PW-23, nothing has come out which may shake their testimonies. No previous enmity or ill-will has even been alleged for his false implication. Thus,



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there is no reason to disbelieve them. Absence of any documentary proof of employment would not in any manner dent the testimonies of the aforesaid witnesses, who are found to be trustworthy. It is therefore proved beyond reasonable doubt that appellant was in employment of the deceased and was working for him since prior to the occurrence.

51. The next circumstance on which the prosecution as well as the learned Trial Court relied is the last seen evidence, which in the present case, was sought to be established through the testimonies of PW-2, PW-5/6, PW-7 and PW-9.

52. PW-2 Smt. Husan Bano, wife of the deceased, in her testimony deposed that on 01st January, 2000, the appellant took her husband from her house to Jaipur for business purposes, but later, it was revealed that he had not reached Jaipur. She then lodged the missing report at police station on 09th January, 2000. In cross examination except for the suggestion that the appellant had not taken the deceased with him, there is no material cross examination on this aspect, so much so, no motive has even been imputed to this witness for making false statement against him.

53. PW-5/6 Mohd. Habib, son of the deceased, also deposed that on 01st January, 2000, the appellant took his father with him to Jaipur at 1.00 pm for the purpose of collecting the payments, but his father did not return thereafter. The presence of PW-5/6, at the house at the relevant time, has not been controverted in cross examination. No suggestion was put in cross examination that the appellant had not taken the deceased with him on 01st January, 2000 at about 1.00 pm.



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54. PW-7 Mohd. Ishtqar, the other son of the deceased, deposed that on 01st January, 2000, at about 1.00 pm, the appellant came and asked him about his father. The appellant then told his father that he should accompany him to Jaipur for collecting the payments. Upon this, PW-7 insisted that he would also accompany them to Jaipur. The appellant asked him to get ready and meet them at Mukut Hotel, where they would wait for him. He deposed that after getting ready when he reached the hotel, he did not find them. Upon an enquiry from a person at the hotel, he was informed that they have already left after taking meals. In cross examination, the presence of PW-7 at the house at the relevant time, is not challenged.

55. The evidence of PW-2, PW-5/6 and PW-7 clearly establish that appellant took the deceased Mohd. Hanif from his residence on the pretext that they were going to Jaipur for the purpose of collecting the outstanding payments. PW-2, being the wife of the deceased, deposed regarding the appellant taking the deceased from their house, while PW-5/6 and PW-7 materially corroborated the circumstances in which the deceased left with the appellant. This evidence is further corroborated by PW-9 Mukut Lal, an independent witness, who stated that the deceased and the appellant came together to his *Dhaba*, took meals and thereafter left together. PW-9 further stated that when PW-7 subsequently came looking for his father, he informed him that the deceased had left with the person who had accompanied him to the *Dhaba*. The presence of PW-9 at the *Dhaba* at the relevant time has not been controverted. There is nothing on record to show that this witness had any relation with the deceased or PWs to falsely implicate



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the appellant.

56. The testimony of PW-9 has been challenged on the ground that there was considerable delay in recording his statement under Section 161 Cr. PC. However, no specific suggestion was made to him as to why his statement under Section 161 Cr. PC was not recorded immediately or that the delay had resulted in his subsequent introduction as a witness. Both the Investigating Officers, that is, Inspector Rajender Gautam (PW-16) and SI Virender Kumar Bargoti (PW-25) were not at all cross examined for their explanation regarding the reasons of delay in recording statement of PW-9 under Section 161 Cr. PC. Therefore, the delay in recording the statement of PW-9 under Section 161 Cr. PC by itself cannot be considered as a circumstance impeaching his credibility.

57. PW-4 Rashid and PW-8 Mohd. Kallu are also the witnesses of last seen. PW-4 Rashid deposed that on 01st January, 2000, he had seen the appellant taking the deceased Mohd. Hanif at Village Mohalla, Maujpur at 1.00 pm. Similarly, PW-8 Mohd. Kallu deposed that he had also seen the appellant with the deceased near the transformer near Tent Wala School on 01st January, 2000. He had seen the deceased along with two other persons including the appellant herein on road leading from Yamuna Vihar to Zafrabad, while they were talking to a *rickshaw wala* near a transformer. In their cross examination, nothing could be brought out to suggest that PW-4 and PW-8 had any reason to falsely implicate the appellant.

58. Thus, the prosecution has not just relied merely upon the testimonies of related witnesses but has produced independent



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witnesses to prove the circumstance of deceased being last seen alive in the company of the appellant. The defence has not been able to bring out any material contradiction which would render the core testimonies of these witnesses unreliable. The circumstance of last seen, therefore, stands duly established.

59. We are conscious that while the “last seen” theory is an important link that may shift the burden on the accused to explain the death, it is not prudent to base conviction solely on this circumstance and it must be applied only after considering the prosecution case as a whole, including the circumstance preceding and following the point of last being seen together, and in taking this view, we are supported by the judgment of Hon’ble Supreme Court in the case of ***Nizam & Anr. v. State of Rajasthan***, (2016) 1 SCC 550.

60. The last seen circumstance assumes considerable significance in the present case when examined with the medical evidence regarding the approximate time of death. PW-14 Dr. Avdesh Kumar, the post-mortem doctor, in his cross-examination conducted on behalf of co-accused Iqbal, stated that the injuries found upon the body were approximately 1 ½ days old. Since the post-mortem was conducted on 03rd January, 2000 at about 5:00 pm, as per the medical evidence, the time of infliction of injuries was sometimes in the night of 01st / 02nd January, 2000. This time-line is consistent with the time when the deceased was last seen leaving in the company of the appellant. The medical evidence, therefore, does not create a temporal gap sufficient to render the last-seen circumstance inconsequential. Rather, it provides material corroboration to the prosecution version regarding



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the relevant time-frame in which the deceased suffered the fatal injuries. The proximity between the last-seen evidence and the approximate time of death is thus an important link in the chain of circumstances.

61. As per Section 106 of the Indian Evidence Act, the onus to explain would shift on the accused only after the prosecution succeeds in establishing the basic facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. If the accused fails to offer a proper explanation about the existence of the said other facts, the Court can draw an inference against the accused. In cases based on circumstantial evidence, the failure of the accused to provide a reasonable explanation as required under Section 106 of the Evidence Act, can serve as an additional link in the chain of circumstantial evidence. However, if the prosecution fails to establish the basic facts in the first place, then the accused's failure to discharge the burden under Section 106 of the Evidence Act becomes irrelevant.

62. In the present case, since the prosecution has been able to prove that the appellant had taken the deceased on the pretext of going to Jaipur and was last seen alive in the company of the appellant, it was incumbent upon the appellant to explain as to when and how they both parted company, or in the alternative, the cause of his death. Mere denial of the prosecution case and the absence of any explanation in the statement under Section 313 Cr. PC is not sufficient. In this regard, reliance is placed on ***Ganeshlal v. State of Maharashtra*** (1992) 3 SCC 106, wherein, the appellant was



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prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

63. The next important circumstance relates to the identification of the recovered body to be that of Mohd. Hanif and the place from where the same could be recovered, pursuant to the disclosure made by the appellant. The appellant was arrested by PW-25 on 09th January, 2000. PW-25 SI Virender Kumar Bargoti deposed that upon interrogation, the appellant gave disclosure statement Ex. PW-25/A, and in such disclosure statement, the appellant confessed to have murdered Mohd. Hanif in the open fields behind the bus stand at Bulandshahar and had left his body there. PW-25 further deposed that on 11th January, 2000, he along with SI Sanjeev, Constable Santosh, Habib, son of the complainant and appellant reached at Bulandshahar Kotwali, where, it came to his notice that one dead body had been recovered from the field of one Khachera behind Shikarpur Bus Stand near Faisalabad on 02nd January, 2000 and the same had been buried after post-mortem as unclaimed. In this regard, DD No. 28 dated 02nd January, 2000 (Ex. PW-14/A-4) and an FIR under Section 302 IPC had already been registered at PS Nagar Kotwali, Bulandshahar. PW-25 further deposed that the appellant pointed out the place, that is, the



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field of Khachera, behind Shikarpur Bus Stand near Faisalabad, Bulandshahar, where he had thrown the dead body after committing murder.

64. PW-6 Mohd. Habib and PW-17 SI Santosh Kumar corroborated the aforesaid version of PW-25. PW-21 Constable Rajender Singh and PW-24 Constable Satyapal Singh of UP Police corroborated the arrival of PW-6 and the police officials from Delhi Police at Bulandshahar and the identification of the body by PW-6 on the basis of the photographs and the clothes of the deceased.

65. Significantly, during cross examination of the aforesaid witnesses, no question or suggestion was put on behalf of the appellant challenging the prosecution chronology timeline, the prior recovery of the unidentified body, the subsequent visit of the Delhi Police pursuant to the disclosure, or the identification of the body and articles. The absence of any such challenge in cross-examination is a relevant circumstance while assessing the evidence, particularly when these witnesses through their testimonies consistently establish that the body was recovered earlier but its identity remained unknown till the Delhi Police arrived along with the appellant Hasmat.

66. The significance of the appellant's disclosure therefore lies not in the discovery of the dead body, which was already in the knowledge and had been recovered by the Bulandshahar Police, but the discovery that such body was of Mohd. Hanif and also his knowledge of the place of recovery of the body. The fact that the Bulandshahar Police had already recovered the unidentified body does not therefore negate the discovery flowing from the appellant's



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disclosure, namely the identification of the body already recovered at the place identified by the appellant in his disclosure statement. It is this information and the fact discovered pursuant thereto, which assumes relevance under Section 27 of the Indian Evidence Act, 1872 [**“Evidence Act”**]. Only a person who was present at the place of commission of the offence, would know about the place of commission of crime and appellant undoubtedly had the exclusive knowledge of the same.

67. In the case of ***Charandas Swami v. State of Gujarat and Ors.*** (2017) 7 SCC 177, pursuant to the disclosure statement made by the accused, a dead body was identified to be that of the deceased/victim, which until then was recovered as dead body of an unknown person from the location disclosed by the accused. It was held that the discovery of the fact arises by reason of fact that information given by the accused exhibited knowledge or mental awareness of information as to its existence at a particular place. It was thus held that the dead body having already been recovered from the same place does not undermine the admissibility of disclosure made by the accused to the IO about the location where the dead body of the deceased was dumped by him, which information was exclusively within the personal knowledge. The relevant paras of the judgment read as under:-

“58. The disclosure made by Accused 3 to the investigating officer was recorded in the panchnama, Ext. 188, when he had led the police party to the spot where the dead body was dumped by him. That location matched with the location from where the dead body of



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an unknown person was recovered on 4-5-1998 on the information given by PW 50 to the local police at Barothi. The fact that the dead body was already recovered from the same place on 4-5-1998 and so noted in the public records in the State of Rajasthan does not undermine the admissibility of the disclosure made by Accused 3 to the investigating officer about the location where the dead body of Gadadharanandji was dumped by him, which information was exclusively within the personal knowledge of Accused 3. The fact that the dead body recovered on 4-5-1998 was of Gadadharanandji, was unravelled and discovered only after the results of its medical examination became available to the investigating agency. Till then, it was considered to be of an unknown person. The courts below have accepted the case of the prosecution that the disclosure made by Accused 3 about the location where the dead body of Gadadharanandji was dumped by him, was admissible under Section 27 of the Evidence Act. The appellants, however, take exception to that by relying on the reported decisions.

.....

65. It is not necessary to multiply the authorities on this aspect. In our opinion, the courts below have rightly placed reliance on the fact discovered by the investigating officer (PW 64) on the basis of the disclosure made by Accused 3 on 2-4-1999, after his arrest on 29-3-1999, as recorded in Ext. 188. The panchnama, Ext. 188 was proved by pancha witness, PW 30. The fact that PW 30 was not on good terms with the accused cannot be the basis to discard his evidence. This aspect has been considered by the High Court and in our opinion, rightly, that the evidence of PW 30 was relied upon for the limited purpose to prove the panchnama and not for any other relevant fact. We affirm the view taken by the courts below about the admissibility of disclosure of the spot where the dead body of



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Gadadharanandji was disposed off by Accused 3. The same stood corroborated from the recovery of a dead body of an unknown person from the same spot by Rajasthan Police on 4-5-1998 on the information provided by PW 50. That dead body, on subsequent medical examination was found to be of none other than that of Gadadharanandji.

.....

74. As noted earlier, it was only on the basis of the disclosure made by Accused 5 as to the place where the murder was committed that the investigating agency was able to take the investigation forward and then interrogate the aforesaid witnesses i.e. PW 25, PW 42, PW 43 and PW 49. Only a person who was present at the time of commission of the offence could have known about the location of the offence and Accused 5 undoubtedly had exclusive knowledge about the place where the crime was committed, a fact which has been affirmed by both the courts. The panchnama drawn on the basis of this disclosure has been corroborated by independent pancha witness PW 31. The courts below, on analysing the relevant evidence, have held that the inescapable conclusion is that the deceased was taken to Navli. We are in agreement with this finding, as the evidence on record supports that conclusion.”

68. We are thus of the firm view that the prosecution has been able to prove the circumstance of identification of the body to be that of the victim/deceased as also about the knowledge of the place of recovery of the same at the instance of the appellant pursuant to his disclosure statement.

69. The next important circumstance in the chain of circumstantial evidence is the motive. No offence is committed without any motive. Motive is an emotion which impels a person to commit the crime.



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70. In order to prove the motive, the prosecution strongly places reliance on the testimonies of PW-2 Smt. Husan Bano, PW-6 Mohd. Habib and PW-7 Mohd. Ishtqar. PW-2 Smt. Husan Bano deposed that the appellant had worked at Jaipur for about one month prior to the incident. She deposed that her husband was having ill health and therefore, he would return after leaving the appellant at Jaipur. Her Husband used to send jackets to the appellant. According to her, the appellant handed over the payment of Rs. 15,000/-. She questioned him for making less payment. She herself contacted the customers to verify the money collected by the appellant from them. She deposed that the appellant had collected an amount of Rs. 1,00,000/- which he failed to pay.

71. Similarly, PW-5/6 Habib also stated in his testimony that the appellant used to receive payments from the parties for the business of his father. PW-7 Mohd. Ishtqar deposed that on 01.01.2000, the appellant had asked his father to accompany him for collection of payment. The testimonies of all the above said three witnesses remained unchallenged on material aspects. It is evident from their testimonies that the appellant used to collect payments on behalf of the deceased from the customers at Jaipur. Admittedly, during investigation, no such customer was examined. However, in our view, the same is only an investigating lapse, on account of which the appellant shall not be entitled for any benefit. In fact, the appellant himself also did not lead any evidence in his defence to show that he had duly accounted for the cash collected by him from the customers of the deceased at Jaipur. We are of the considered view that the



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prosecution has successfully proved that there were money disputes between the appellant and the deceased, and owing to his failure to account for the payments collected by him, which constituted as motive to commit the murder.

72. The next circumstance relied upon by the prosecution is the extra-judicial confession made by the appellant before PW-13 Mohd. Yasin. PW-13 deposed that 8/10 days before the police met him, on 10/11th January, 2000, the appellant told him that he had killed one person in the house of co-accused Iqbal. He had confessed that he had killed the said person over money dispute. However, he nowhere deposed that the said extrajudicial confession was regarding the killing of the deceased Mohd. Hanif. No date was given on which the appellant had made the extra-judicial confession. He did not report the matter to the police immediately regarding such confession made by the appellant.

73. In cross-examination, PW-13 stated that he had not disclosed the confession to police or any other person in authority before the police subsequently came to his house. He was unable to furnish any reason for withholding such material information. He further stated that he had narrated about the alleged confession to approximately 15-20 persons including Yakub, Yusuf, Ershad, Shakeel, Babu, Sharfaraz, Akbar and Salauddin. However, none of these persons were examined by the prosecution nor any explanation was offered as to why these purported independent recipients of information were not produced to corroborate the version of PW-13.

74. In cross examination, PW-13 admitted that the appellant



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appeared terrified, was fully drunk and was not in his senses when he made the alleged confession and further accepted that in such a condition at times a person may speak about something which had never taken place. He admitted that he made no attempt to verify the truthfulness of the alleged confession. The unexplained delay in reporting the confession, the absence of corroboration from the said 15-20 persons, who were informed about the confession by PW-13 and the state of condition of the appellant at the time of the confession diminishes the credibility of the testimony of PW-13. The learned Trial Court rightly discarded this circumstance as it was not found to be sufficiently reliable.

75. The impugned judgment has also been challenged on the ground of undue delay in lodging the missing report by the family of the deceased. Upon examination of the testimony of PW-2 Smt. Husan Bano, it is found that the appellant informed her on telephone either on the same day or on the next day that they had reached Jaipur. She sent her son Ishtqar to Jaipur to check if her husband had reached Jaipur. Upon his return from Jaipur, Ishtqar informed that Mohd. Hanif was not in Jaipur. According to PW-2, on the third day, she received a telephone call from the appellant that they were in Dehradun. According to her, she had searched for the deceased, but could not trace him, and ultimately, lodged the report with the police on 09th January, 2000.

76. In the cross-examination of PW-2, no suggestion was put to the witness that she had received no such telephone call from the appellant. The testimony of PW-2 finds corroboration from the



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testimony of PW-7 Mohd. Ishtqar who deposed that he also received telephone call from the appellant that they were well and would return soon. The same is further corroborated by the testimony of PW-11 Aslam who deposed that the appellant used to call on the STD booth of one Salim and during such telephonic conversation he had told that Hanif was there with him and that some financial matter was pending. According to him, the last telephone call made by the appellant was received at the shop of STD owner Mohd. Salim, that they had returned to Delhi. The testimonies of PW-2, PW-7 and PW-11 to the aforesaid extent have remained materially unchallenged with no cross-examination.

77. Thus, the evidence suggests that prior to the lodging of the report by PW-2 with the police on 09th January, 2000, the appellant had been misleading them by making telephone calls, firstly by saying that they had reached Jaipur and later telling them that they have gone to Dehradun. Such evidence satisfactorily explains the reason for the delay. Even otherwise, the delay itself cannot be considered as fatal to the prosecution case. In the case of **Kamlesh vs. State**, 2023/DHC/000051, this Court, *inter alia*, held that the delay in lodging the FIR raises considerable doubts in the case of prosecution, however, the same depends upon the facts of each case and every delay in registration of the FIR, cannot be said to be fatal to the case of the prosecution and if the delay is sufficiently explained, the case of the prosecution would not suffer.

78. The argument regarding the non-examination of the STD booth owner Salim, does not demolish the prosecution case. The alleged



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calls made by the appellant to the family of the deceased are supportive circumstances and are not the foundation, upon which, the conviction rests. Even assuming that the evidence concerning the STD calls is excluded from consideration, the prosecution case still does not collapse.

79. We also find no merit to the challenge raised on account of contradiction of the date mentioned in DD No. 6-A. While the date of missing of Mohd. Hanif was recorded as 30th December, 1999 in DD No. 6-A, PW-2 subsequently stated that the said date was 01st January, 2000. It is true that DD No. 6-A is the earliest information regarding the missing of Mohd. Hanif and therefore the discrepancy in the said date deserves consideration. However, the genesis of the present case is not the recording of DD No. 6-A by PW-1 Constable Siri Pal, but lies in the statement of PW-2, recorded by PW-25 SI Virender Kumar, which form the basis of *rukka* and the subsequent registration of the FIR Ex. PW-3/A. The discrepancy of the date in DD No. 6-A, in view of the consistent stand of the witnesses, may be a typographic error, and therefore, may not be given undue importance.

80. The learned Trial Court took note of the fact that the appellant was found present at his residence on 09th January, 2000, but he did not explain where he remained present in between 01st January, 2000 and 09th January, 2000. He did not produce any witness to show his presence at any other place. The learned Trial Court was of the view and rightly so, that the concealment of material facts by the appellant shows his unnatural conduct.

81. Thus, the cumulative effect of the circumstances proved on



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record, establishes a complete chain pointing towards the appellant's guilt. The learned Trial Court correctly appreciated the evidence and arrived at the conclusion that the prosecution succeeded in establishing the guilt of the appellant beyond reasonable doubt.

CONCLUSION:

82. The findings recorded by the learned Trial Court are based on a proper appreciation of evidence on record and do not suffer from any perversity and illegality warranting any interference by us. The sentence imposed is proportionate and commensurate with the offence committed. We, therefore, find no ground to interfere with the trial court's judgment.

83. The appeal accordingly stands dismissed.

84. The appellant is directed to surrender before the Superintendent Jail within a period of two weeks from the date of the judgment for serving the remaining sentence and in the event of failure to surrender, appropriate steps be taken by the Superintendent Jail and the learned Trial court to ensure that the appellant is taken into custody for serving the remaining sentence.

85. Copy of this judgment be sent to the learned Trial Court and the concerned Jail Superintendent for information and compliance.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

SEPTEMBER 25, 2026/na