



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

Date of decision: 15th DECEMBER, 2025

IN THE MATTER OF:

+ CRL.A. 624/2003

SUDESH KUMAR

.....Appellant

Through: Mr. Joginder Tuli, Ms Joshini Tuli,
Ms. Taniya Qureshi and Mr. Nishant,
Advocates

versus

THE STATE

.....Respondent

Through: Mr. Aashneet Singh, APP for the
State

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The Appellant has approached this Court challenging the Judgment dated 25.08.2003 and the Order on Sentence dated 26.08.2003 passed by the learned Additional Sessions Judge, Delhi (*hereinafter referred to as "learned Trial Court"*) in SC No. 05/2000 arising out of FIR No. 45/2000 registered at Police Station Uttam Nagar for offences under Section 302, 201 & 34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*).

2. Shorn of unnecessary details, the facts leading up to the present Appeal are as follows :-

- i. On 25.11.1999, one Mrs Beena (*hereinafter referred to as "PW-9/Beena"*) lodged a report at Police Station Uttam Nagar, stating that



on 20.11.1999, her husband, namely Shanker Singh, had gone to B-350, Mohan Garden and did not return home.

- ii. In the description provided to the police, she stated that her husband had a round face, was slim built and about 5 feet and 4 inches tall. She also stated that her husband was wearing a cream coloured shirt, maroon coloured pants and leather sandals. The report was noted down by the police *vide* DD No. 9A.
- iii. On 26.11.1999, the Nangloi police recovered a dead body from Ganda Nala (open sewer), Sainik Enclave. Information to this effect was recorded *vide* DD No. 12A. The body was sent to Subzi Mandi Mortuary, where the body was preserved. Thereafter, on 29.11.1999 a post mortem was conducted, photographs were taken and the body was cremated.
- iv. PW-9/Beena was informed by her brother Ravinder and Jagveer that Uttam Nagar police had told them that a dead body, whose photographs they were carrying, was recovered two months ago and the same could not be identified.
- v. Subsequently, PW-9/Beena was taken to Police Station Nangloi where she was shown photographs of the dead body. PW-9/Beena identified the person in the photographs as her husband, Shanker Singh (*hereinafter referred to as “the deceased”*). She was also shown the clothes recovered from the body, which she confirmed belonged to the deceased.
- vi. A case under Section 302/201/34 IPC was registered by the police at Uttam Nagar, as the doctor who conducted the post-mortem gave an



opinion that the cause of death was asphyxia resulting from strangulation.

- vii. The Appellant was arrested on 01.02.2000, following which he made a disclosure statement and led the police to the place of occurrence.
- viii. In his disclosure statement the Appellant admitted that he, along with his brother Pawan strangled the deceased after calling him to house No. B-350, Mohan Garden, which belonged to the Appellant's brother-in-law (*hereinafter referred to as "the house at Mohan Garden"*) where the deceased was called in the capacity of a *halwai* at the marriage of the Appellant's niece on 20.11.1999.
- ix. As per the Prosecution's story, on the intervening night of 20/21.11.1999, the Appellant and the deceased drank alcohol together, whereafter they had a quarrel. PW-18/Vinod Singh and Ghanshyam, who were assisting the deceased as helpers, noticed the said quarrel. After finishing their work at about 10-11 PM, they asked the deceased if they could leave for home. The deceased is stated to have told them that they could spent the night at the house whereafter they slept on two cots outside the house, in an open plot. PW-18/Vinod Singh and Ghanshyam slept on one cot while the Appellant and the deceased slept on another cot. At about 3 AM on the intervening night of 20/21.11.1999, the Appellant's brother Pawan gagged the deceased's mouth, while the Appellant used the deceased's muffler to strangle him to death. Thereafter, the Appellant and his brother used a rickshaw to transport and dump the body in a Ganda Nala at Sainik Enclave.



- x. After the recovery of the body and its identification from photographs by PW-9/Beena, the Appellant was arrested by the police and his disclosure statement was recorded. On the basis of this disclosure statement, the muffler of the deceased which was allegedly used to strangle him was recovered.
- xi. The purported motive behind the murder was an illicit relationship between the Appellant and PW-9/Beena.
- xii. While the Appellant was arrested, his brother Pawan could not be traced and was declared as a proclaimed offender. Pawan was later arrested, tried and acquitted for want of evidence.
- xiii. Charges under Section 302, 201 and 34 of the IPC were framed against the Appellant on 24.05.2000.
- xiv. During the trial, 19 Prosecution Witnesses were examined and the statement of the Appellant under Section 313 of the Criminal Procedure Code, 1973 (*hereinafter referred to as the "Cr.P.C."*), was recorded.
- xv. The Appellant denied the charges levelled against him as well as the fact that he accompanied the deceased or that he consumed alcohol with the deceased. The Appellant also denied that the muffler of the deceased was recovered at his instance. He alleged that he was being falsely implicated. However, he did not lead any defence in support of his plea of false implication.
- xvi. Since there was no direct evidence which could link the Appellant with the commission of the offence, the entire case of the Prosecution was based on circumstantial evidence.



3. The Trial Court, in order to bring home the conviction of the Appellant, has primarily relied on a conjoint reading of the testimonies of PW-9/Beena, PW-10/Vikas, PW-12/HC Kuldeep Singh and PW-18/Vinod Singh. The learned Trial Court has also relied on the disclosure statement given by the Appellant and the resultant recovery of the muffler of the deceased that is purported to have been used as the murder weapon.

4. The learned Trial Court held that it had been conclusively proved that the Appellant and deceased were together on the intervening night of 20.11.1999 and 21.11.1999. The learned Trial Court also noted that the Appellant had made different statements to different witnesses regarding the whereabouts of the deceased. This, in the view of the learned Trial Court, clearly established that Appellant knew that deceased had been murdered by him, and the deceased's dead body had been thrown in the Ganda Nala and that is the reason why on first enquiry by PW-18/Vinod and Ghanshyam, the co-workers of deceased, the Appellant told them that the deceased had left the house in the night. On the subsequent enquiry made by Vikas, the son of the deceased had gone somewhere for work and would return after 2 to 3 days and thereafter, the Appellant visited PW-9/Beena, the wife of the deceased and made enquiries from her as to why the deceased had not turned up for work at the place of marriage. The relevant portion of the judgement of the Trial Court reads as under:

“67. The different statements, made by accused Sudesh about the whereabouts of Shankar, clearly establish that accused Sudesh knew that Shankar had been murdered by him and his dead body has been thrown in the Ganda Nullah and that is the reason that on first enquiry by Vinod and Ghanhsyam, the co-workers of deceased, accused Sudesh had disclosed to them that



Shankar had left the place in the night. The subsequent enquiry made by the son of the deceased from accused Sudesh is to the effect that Shankar had gone somewhere for work. He will return after 2/3 days. Sudesh insisted that the son of the deceased should receive the amount of the work done by the son of the deceased because his father is to return after few days. Then the visit of the accused Sudesh to the house of wife of the deceased and making enquiry from her as to why Shankar had not turned up for work at the place of marriage and her reply that Shankar is already at the work and has not returned in the night and then another statement, made by accused Sudesh, that Shankar was with him upto 2 pm and thereafter he had left and the fourth stand taken by the accused that the deceased had gone to work somewhere and will return after few days, as told by him to the son of the deceased, clearly prove that the accused was improving upon his statements to conceal the facts that Shankar has already been murdered by him and that is why on various dates and times whenever he was asked about the whereabouts of Shankar, he had stated different facts at different times.

68. Now, coming to the motive part of the accused, it can be seen that as per the statement made by Veena, she was residing at the house owned by maternal uncle of the accused and was a tenant in the said house for several years and this accused had been visiting her at the said place and the statement made by Smt. Veena that the visits of accused were not liked by her husband and thereafter, after disappearance of Shankar, the visit the of the accused to the house of his wife and first making enquiry from the son of the deceased as to where his father had gone and thereafter the accused going upstairs contacting the wife of the deceased and putting some questions to her as to where her husband had gone, clearly prove that there had been some intimacy between the accused and the wife of the



deceased and the accused wanted to eliminate the obstacle in his way of meeting the wife of the deceased and so he murdered Shankar.

69. In the statements, made by the witnesses, and the disclosure statement, made by the accused, these facts have been revealed by both the witnesses and by the accused, but, in the statement, made before the court, Smt. Veena has not supported this portion. She was cross examined on this point that Sudesh had been visiting her and his visits were not liked by her husband, has been denied by her, but the fact remains that when Shankar had been with the accused on 20.11.99, he had already told Ghanshyam and Vinod on 21.11.99 that Shankar had left to somewhere, thereafter there was no need for the accused to go to the house of the wife of the deceased and to make an enquiry as to where Shankar had gone and he would have been satisfied with the enquiry made by him from the son of the deceased that Shankar is not at home. But he insisted, went upstairs and enquired from the wife of the deceased about the whereabouts of Shankar. This shows that there was some intimacy between the two and this was a sufficient motive for accused Sudesh to murder Shankar and he did so.

70. The Hon'ble High Court of Delhi has laid down four principles, which are required to be proved in a case of circumstantial evidence, and, in my view, all these facts stand proved against this accused Sudesh. The presence of deceased and accused together on 20.11.99 and the subsequent disappearance of the deceased on the night intervening 20.11.99 and 21.11.99 from the company of the accused and that the recovery of dead about four days after his disappearance prove that it was the work of accused Sudesh who had murdered Shankar. There was no



occasion for any other person to come in between Sudesh and Shankar to kill him.

71. Moreover, the weapon of offence i.e. the muffler, with which the deceased had been strangulated, had been concealed by accused Sudesh and he got it recovered from the place near the place of occurrence and this recovery has been witnessed by the son of the deceased and police witnesses. This muffler has been proved to be the ligature material, with which Shankar was strangulated, as the corresponding ligature marks possible from this muffler only. Thus, the recovery of weapon of offence i.e. the muffler, at the instance of the accused, points towards the guilt of the accused.

72. The circumstances, referred to above and brought on record by the police, form a complete chain and the only conclusion, which comes from the aforesaid facts, is that the crime has been committed by accused and none else.

73. From the above discussion, I come to the conclusion that prosecution has successfully proved that Shankar was with accused Sudesh on 20.11.99 at Mohan Garden and he had taken liquor with accused Sudesh and thereafter he was not seen alive and during his stay with accused Sudesh on the night intervening 20/21-11-99 he had been murdered by Sudesh by strangulating him with the help of muffler, which has been recovered at the instance of accused, and accused Sudesh had also pointed out the place where the murder was committed by him and also pointed out the place from where the dead body was recovered by the police. The dead body has been identified by the widow of the deceased to be the body of her husband. So, from the above discussion, it can be safely concluded that prosecution has successfully proved that accused Sudesh had committed the murder of Shankar on the night intervening 20th and 21st of November, 1999 and



believing the prosecution story, as true, I hold accused Sudesh guilty of the offence punishable u/s. 302 IPC and convict him thereunder.”

5. The learned Trial Court, after considering the arguments advanced by the parties, perusing the evidence on record and depositions of the witnesses concluded that the Prosecution had proved its case beyond all reasonable doubt and accordingly, the Appellant was convicted under Section 302 of the IPC *vide* Judgment dated 25.08.2003. *Vide* the order on sentence dated 26.08.2003, the Appellant was directed to undergo life imprisonment and pay fine of Rs.5000/- under Section 302 IPC and in the event of default in payment of fine, he was directed to further undergo rigorous imprisonment for one year. The Appellant has now sought to assail the impugned Judgement of conviction and Order on sentence passed by the learned Trial Court. The principal submission advanced by the learned Counsel for the Appellant is that the Prosecution’s case suffers from glaring infirmities. The learned Counsel for the Appellant has also submitted that the conviction of the Appellant is based on circumstantial evidence and the Prosecution has failed to establish an unbroken chain of circumstances. Therefore, the conviction of the Appellant is unsustainable. The learned Counsel for the Appellant, has attacked the case of the Prosecution on six broad grounds, which shall be delineated below.

6. Firstly, with respect to ascertaining the identity of the body of the deceased, learned Counsel for the Appellant has submitted that the identity of the body has not been firmly established. He has contended that there is a major difference in the height of the deceased as stated by PW-9/Beena and PW-8/Dr L.C Gupta. He submits that PW-9/Beena, who is the wife of the



deceased has stated in her missing person report dated 25.11.1999 that her husband's height was about 5 feet 4 inches. This factum has been recorded in the Rukka bearing DD No. 9B. However, PW-8/Dr. L.C Gupta in his autopsy report has mentioned that the height of body on which he performed post-mortem on 29.11.1999, was about 5 feet 11 inches. He argues that the Prosecution has been unable to explain this material discrepancy.

7. Secondly, learned Counsel for the Appellant has also argued that that the post-mortem examination was conducted on 29.11.1999 by PW8/ Dr. L.C Gupta, and the approximate time since death is 5 days prior to the post mortem i.e. 24.11.1999. However, as per the sequence of events, the deceased had allegedly gone missing between 20/21.11.1999.

8. Thirdly, it has been contended by the learned Counsel for the Appellant that the Prosecution has been unable to demonstrate or explain as to how the body of the deceased was transported from the alleged place of incident to the place of recovery. Both these places are at a distance of about 2.5 km from each other. The body of the deceased was recovered from the Ganda Nala near Sainik Enclave on 26.11.1999, whereas the alleged place of incident was Mohan Garden, Uttam Nagar. The learned Counsel for the Appellant has submitted that no witnesses have been examined to explain this crucial missing link in the chain of events.

9. Fourthly, the learned Counsel for the Appellant has submitted that the recovery of the alleged weapon of the offence, a muffler, is questionable. It is the case of the Prosecution that the deceased had been strangled by the Appellant and his brother Pawan, by using the deceased's muffler. The learned Counsel for the Appellant has contended that the said muffler, which is purported to be the weapon used for commission of the offence, was



recovered from an open space after a gap of more than two months. While the date of the incident is stated to be 20.11.1999-21.11.1999, the muffler was recovered on 01.02.2000.

10. Fifthly, the learned Counsel for the Appellant has vehemently contended that the alleged motive i.e., a love angle between the Appellant, PW-9/ Beena and the deceased, as advanced by the Prosecution and relied upon by the learned Trial Court, is bereft of any evidence whatsoever and is based on surmises and conjectures. He argues that in case of conviction based on circumstantial evidence, the absence of any motive ought to have been viewed in favour of the Appellant.

11. Sixthly, the learned Counsel for the Appellant has submitted that the clothes of the deceased were not identified by PW-9/Beena, wife of the deceased. PW-9/Beena has categorically stated in her deposition that her husband was wearing a maroon coloured pant and a vest of the brand "TT", which was missing. The deceased was clothed in black pants and vest without the brand "TT". At best the Prosecution may draw an inference that the deceased changed his clothes after 21.11.1999 however, the same has not been corroborated.

12. The learned Counsel for the Appellant has placed reliance on the Judgment of the Apex Court in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, to submit that the golden principles with respect to conviction of a person on the basis of circumstantial evidence has not been followed by the Trial Court. The Prosecution has been unable to prove its case beyond reasonable doubt and therefore, given that the case of the Prosecution is based purely on circumstantial evidence, the Appellant ought to have been given the benefit of doubt and accordingly acquitted.



13. *Per contra*, the learned APP for the State has reiterated the arguments raised before the Ld. Trial Court and vehemently opposed the arguments advanced by the learned Counsel for the Appellant. He contends that the Appellant has been convicted after a thorough appreciation of evidence. He has taken this Court through the evidence recorded before the learned Trial Court. He states that the case of the Prosecution has been proven beyond all reasonable doubt and the chain of events is complete. Thus, the conviction should stand.

14. Learned APP for the State, while opposing the argument advanced by the learned Counsel for the Appellant regarding the identification of the deceased, has argued that PW-13/ Inspector Sumer Singh, PW-14/Ct. Brij Lal and PW-15/SI Suresh Kumar and PW-9/Beena, in their depositions have all pointed out that even though the body of the deceased was in an advanced state of decomposition, the face was recognizable. Learned APP has also placed emphasis on the deposition of PW-9/Beena who was the wife of the deceased. In her deposition she has categorically stated that she had lived with the deceased for many years and could easily recognize him.

15. Heard the learned Counsels for the parties and perused the material on record.

16. The Prosecution's case rests entirely on circumstantial evidence. Its foundation is the contradictory statements made by the Appellant corroborated with the testimony of PW-18/Vinod Singh, who had last seen the Appellant and the deceased together at the house at Mohan Garden. The Prosecution has also relied on the recovery of the deceased's muffler, which was purportedly used to strangle him. The said muffler was recovered at the instance of the Appellant's disclosure statement. According to the deposition



of PW-9/ Beena, on 20.11.1999 the Appellant's mother and his brother-in-law had come to their house in order to ask the deceased to work as a *halwai* at the house at Mohan Garden for the Appellant's niece's wedding. At about 7 AM the same morning, the deceased left for the house at Mohan Garden, accompanied by PW-18/ Vinod Singh and Ghanshyam.

17. PW-18/Vinod is the witness who last saw the Appellant with the deceased, and his deposition forms a vital link that has been relied upon by the Prosecution to prove the presence of the deceased in the house at Mohan Garden before the deceased went missing. In his deposition PW-18/Vinod Singh stated that he, along with Ghanshyam accompanied the deceased as helpers. In his deposition PW-18/Vinod Singh has stated that at about 8-9 PM on 20.11.1999, the Appellant and the deceased were sitting together, consuming alcohol, after which some dispute allegedly arose between the Appellant and the deceased. Between 10 and 11 PM, after completing their work, PW-18/Vinod Singh and Ghanshyam asked the deceased whether they could proceed back home. Upon this query the deceased told PW-18/Vinod Singh and Ghanshyam that the house was like their own. Accordingly, the deceased, PW-18/Vinod Singh, Ghanshyam and the Appellant spent the night together in the house at Mohan Garden. PW-18/Vinod Singh and Ghanshyam slept on one cot whereas the deceased and the Appellant slept on another at around midnight. In his deposition, PW-18/Vinod Singh has deposed that upon waking up at around 6 AM he was unable to locate the deceased and made enquiries from the Appellant about his whereabouts. PW-18/Vinod Singh has also deposed that the Appellant told him that the deceased had left the house at about 3:30 or 3:40 AM. He has further stated



that the Appellant asked PW-18/Vinod Singh to arrange for an alternative *halwai* as the main function was scheduled for that very day.

18. It is the case of the Prosecution that the Appellant, with an intent to conceal his crime, gave different versions to different PWs regarding the whereabouts of the deceased to delay the discovery of the deceased's body. As per PW/9 Beena the Appellant visited her house on 21.11.1999 at around 1 PM and informed her that her husband had not reached the place where he was to prepare food, later admitting that he had consumed alcohol with the deceased at the house at Mohan Garden. She then sent her son, PW-10/Vikas to Mohan Garden to enquire about the deceased.

19. PW-10/ Vikas's deposition reveals that the Appellant came to their house on 21.11.1999 and asked him where his father was, whereafter the Appellant went and talked to PW-9/Beena. Following this, PW-10/Vikas was sent to Mohan Garden by his mother PW-9/Beena to ascertain the deceased's whereabouts. PW-10/Vikas further stated that upon reaching the house at Mohan Garden, he met the Appellant, who informed him that the deceased had gone for work and would return after two to three days. When PW-10/Vikas went to Mohan Garden on 23.11.1999, he was again told by the Appellant that his father would return after some time.

20. PW-17/ HC Pradeep Kumar was one of the police officers who arrested the Appellant. He deposed that the Appellant made a disclosure statement while he was in custody and led the police to a vacant plot in front of the house at Mohan Garden, indicating it as the site where the deceased had been murdered. The Appellant then directed the police to a heap of bricks on the same plot, from which the deceased's muffler was recovered. PW-10/ Vikas, who was present with the police team at that time, identified



the muffler as belonging to his father, the deceased. It is the case of the Prosecution that this recovery has been made solely on the basis of the disclosure statement of the Appellant.

21. It is for this Court to assess whether the chain of circumstances relied upon by the Prosecution, namely, recovery of the deceased's muffler at the instance of the Appellant i.e., disclosure statement, testimonies of the PWs and the deposition of PW-18/Vinod Singh, identifying the Appellant as the last person seen with the deceased, conclusively establishes the case of the Prosecution beyond reasonable doubt by excluding every other reasonable hypothesis consistent with the innocence of the Appellant to a point that the guilt of the Appellant is the only incontrovertible conclusion.

22. In cases like the present one, where the Prosecution's case is based entirely on circumstantial evidence, the chain of circumstances from which the guilt of the accused is sought to be drawn must be cogently established. The facts established must be of such a nature that they unerringly point out at the guilt of the accused. The circumstances, when taken cumulatively, must form a chain so complete that there can be no escape from the conclusion that the crime was committed by the accused and the circumstances cannot be explained by any other reasonable hypothesis. The law regarding circumstantial evidence has been crystallised in the case of Sharad Birdhichand (supra), wherein the Apex Court has held as under:-

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952



SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“It is well to remember that in cases where the 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, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

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.”

23. The Apex Court in Majenderan Langeswaran v. State (NCT of Delhi), (2013) 7 SCC 192 has discussed the general jurisprudence regarding appreciation of circumstantial evidence, the relevant excerpts read as under:-



“16. Now, we have to consider whether the judgment of conviction passed by the trial court and affirmed by the High Court can be sustained in law. As noticed above, the conviction is based on circumstantial evidence as no one has seen the accused committing murder of the deceased. While dealing with the said conviction based on circumstantial evidence, the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. the guilt of the accused, which would mean that the onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the court.”

17. In Hanumant Govind Nargundkar v. State of M.P. [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] , this Court observed as under: (AIR pp. 345-46, para 10)

“10. ... It is well to remember that in cases where the 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, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”



18. *In Padala Veera Reddy v. State of A.P. [1989 Supp (2) SCC 706 : 1991 SCC (Cri) 407] , this Court opined as under: (SCC pp. 710-11, para 10)*

“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].)”



19. *In C. Chenga Reddy v. State of A.P. [(1996) 10 SCC 193 : 1996 SCC (Cri) 1205]*, this Court while considering a case of conviction based on the circumstantial evidence, held as under: (SCC pp. 206-07, para 21)

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence.”

20. *In Ramreddy Rajesh Khanna Reddy v. State of A.P. [(2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512]*, this Court again considered the case of conviction based on circumstantial evidence and held as under: (SCC p. 181, para 26)

“26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See Anil Kumar



Singh v. State of Bihar [(2003) 9 SCC 67 : 2004 SCC (Cri) 1167] and Reddy Sampath Kumar v. State of A.P. [(2005) 7 SCC 603 : 2005 SCC (Cri) 1710])”

21. In Sattatiya v. State of Maharashtra [Sattatiya v. State of Maharashtra, (2008) 3 SCC 210 : (2008) 1 SCC (Cri) 733] , this Court held as under: (SCC pp. 214-15, para 10)

“10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.”

This Court further observed in the aforesaid decision that: (Sattatiya case [Sattatiya v. State of Maharashtra, (2008) 3 SCC 210 : (2008) 1 SCC (Cri) 733] , SCC p. 217, para 17)

“17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court—Bharat v. State of M.P. [(2003) 3 SCC 106 : 2003 SCC (Cri) 738] In the light of the



above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime.”

22. In State of Goa v. Pandurang Mohite [(2008) 16 SCC 714 : (2010) 4 SCC (Cri) 104] , this Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

23. It would be appropriate to consider some of the recent decisions of this Court in cases where conviction was based on the circumstantial evidence. In G. Parshwanath v. State of Karnataka [(2010) 8 SCC 593 : (2010) 3 SCC (Cri) 1027] , this Court elaborately dealt with the subject and held as under: (SCC pp. 602-603, paras 23-24)

“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.”



24. *In Rajendra Pralhadrao Wasnik v. State of Maharashtra [(2012) 4 SCC 37 : (2012) 2 SCC (Cri) 30] , while dealing with the case based on circumstantial evidence, this Court observed as under: (SCC pp. 41-42, paras 12-13)*

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

13. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.”

25. *Last but not the least, in Brajendrasingh v. State of M.P. [(2012) 4 SCC 289 : (2012) 2 SCC (Cri) 409] , this Court while reiterating the above principles further added that: (SCC pp. 299-300, para 28)*



“28. Furthermore, the rule which needs to be observed by the court while dealing with the cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent till proven guilty and that the accused is entitled to a just and fair trial. (Ref. Dhananjoy Chatterjee v. State of W.B. [(1994) 2 SCC 220 : 1994 SCC (Cri) 358] , Shivu v. High Court of Karnataka [(2007) 4 SCC 713 : (2007) 2 SCC (Cri) 686] and Shivaji v. State of Maharashtra [(2008) 15 SCC 269 : (2009) 3 SCC (Cri) 146] .)”

24. After a careful examination of the material on record, depositions of various witnesses and the submissions advanced by the learned Counsels for the Appellant and the State, this Court is of the considered view that the judgment of the learned Trial Court is unsustainable and is liable to be set aside. In the present case conjectures have been substituted for proof and the chain of circumstances as established by the Prosecution does not form a complete and unbroken chain of events so as to exclude the innocence of the Appellant.

25. It is well settled that the case of the Prosecution must stand or fall on its own legs and in cases based on circumstantial evidence, the question as to whether the chain of events is complete or not would depend on the facts of each case emanating from the evidence therein. There is no universal



yardstick or a straightjacket formula. However, as a thumb rule, the Prosecution must build its case brick by brick and conversely all that needs to be done by the Defence Counsel is to dislodge one brick and create a reasonable doubt and render the entire structure of the prosecution's case untenable. It is equally settled that where there are two plausible views on the evidence, the view favourable to the accused must be adopted and the benefit of doubt must go to the accused. In the present case, the Prosecution's case is unable to support the weight of the story propounded by it. There are gaping holes in the case of the Prosecution that they have not been able to explain.

26. PW-18/ Vinod Singh, is the sole "last-seen" witness. His deposition has been relied upon by the Prosecution in order to establish that the Appellant was last with the deceased at the house. To put it succinctly, PW-18/ Vinod Singh has deposed that on the night of 20.11.1999, the Appellant consumed alcohol with the deceased after which they had a quarrel and they went to sleep. In the morning when PW-18/Vinod woke up and the deceased was nowhere to be found. Thereafter, the body of the deceased was recovered from the Ganda Nala at Sainik Enclave on 26.11.1999.

27. It is a settled principle of law that the mere factum of the accused being last seen in the company of the deceased is not sufficient to sustain a conviction. The Prosecution must also establish, through clear, reliable, and clinching evidence that the deceased met with an unnatural death and that the accused person had the knowledge of, or had participated in the act causing such death. The circumstances must be inextricably linked to each point in time between the accused being last seen with the deceased and the death of the deceased that no other reasonable hypothesis other than the guilt



of the accused can be arrived at. In lack thereof, the mere factum of the accused last being seen together with the deceased is not enough. While elucidating on the aforementioned position, the Apex Court in Sahadevan v. State of T.N., (2012) 6 SCC 403, has held as under:

28. With the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This concept is also accepted in various judgments of this Court. The Court has taken the consistent view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and the deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to a finding of guilt.

29. In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court took the view that where the appellant was alleged to have gone to the house of one Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram, the evidence was very shaky and inconclusive. Even if it was accepted that they were there, it would, at best, amount to be the evidence of the appellants having been last seen together with the deceased. The Court further observed that: (SCC p. 385, para 31)

“31. ... it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record [a] finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction, on that basis alone, can be founded.”

30. Even in State of Karnataka v. M.V. Mahesh [(2003) 3 SCC 353 : 2003 SCC (Cri) 795] this Court held that: (SCC p. 354, para 3)



“3. ... Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that [the deceased] had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court.”

31. In State of U.P. v. Satish [(2005) 3 SCC 114 : 2005 SCC (Cri) 642] this Court had stated that (SCC p. 123, para 22) the principle of last seen comes into play

“where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

32. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.”

28. Similarly, the Apex Court in Chandrapal v. State of Chhattisgarh, (2023) 16 SCC 655, has held as under:



24. *In Bodhraj v. State of J&K [Bodhraj v. State of J&K, (2002) 8 SCC 45 : 2003 SCC (Cri) 201], this Court held in para 31 that : (SCC p. 63)*

“31. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

25. *In Jaswant Gir v. State of Punjab [Jaswant Gir v. State of Punjab, (2005) 12 SCC 438 : (2006) 1 SCC (Cri) 579], this Court held that in the absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of “last seen together”, even if version of the prosecution witness in this regard is believed.*

26. *In Arjun Marik v. State of Bihar [Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551], it was observed that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused, and therefore no conviction on that basis alone can be founded.”*

29. This Court has gone through the evidence on record and is of the considered opinion that the Prosecution has not been able to demonstrate any proximity between the time at which the Appellant was last seen with the deceased at the house at Mohan Garden and the point in time when the body of the deceased was discovered. As per the version of the Prosecution, it has been averred that the date of the incident is 20/21.11.1999, and the missing person report was filed by PW-9/Beena on 25.11.1999. The body of



the deceased was recovered on 26.11.1999 and the post mortem was conducted on the body on 29.11.1999. As per the deposition of PW-8/ Dr. L.C Gupta, the approximate time of death of the deceased was about 5 days prior to the post-mortem, which would make the tentative time of death to be around 24.11.1999. Therefore, in the facts of the present case the mere factum of the Appellant and deceased being last seen together would not be sufficient to establish the that the Appellant had the knowledge of, or had participated in the act causing the unnatural death of the deceased.

30. The Prosecution has also placed significant reliance on the recovery of the deceased's muffler pursuant to a disclosure statement made by the Appellant. PW-17/HC Pradeep Kumar has deposed that the Appellant had led the police to a vacant plot in front of the house at Mohan Garden and pointed to a heap of bricks from where the muffler of the deceased was recovered. PW-10/Vikas, who is the son of the deceased, identified the muffler as belonging to his father, the deceased.

31. PW-8/ Dr. L.C Gupta, in his deposition has stated that he had examined the said muffler upon an application moved by the police in order to ascertain whether the said muffler was used in the commission of the offence. He deposed that the ligature marks present on the neck of the deceased, as mentioned by him in the post-mortem report could be possible with the said muffler or like material if used as a ligature. The deposition of PW-8/ Dr. L.C Gupta does not conclusively show or demonstrate that it was indeed the deceased's muffler that was used to strangle him. On the contrary, he has mentioned that the ligature marks could possibly be consistent with the use of the muffler or any like material used as a ligature.



32. It is also pertinent to note that there are multiple aspects that shroud the recovery of the muffler, in suspicion. Firstly, the recovery of the muffler was made after a lapse of more than two months after the discovery of the body of the deceased. Secondly, the recovery was made from an open and accessible plot and the Prosecution has not been able to demonstrate that the location was within the exclusive knowledge or possession of the Appellant. Thirdly, no medical or forensic evidence has been adduced in order to demonstrate that the said muffler was used as a ligature or that the muffler bore any trace of blood or DNA linking it to the act of strangulation. Fourthly, the recovery was made in the presence of PW-10/ Vikas, son of the deceased, who at that time was only 16 years old.

33. The Prosecution has not been able to explain as to why the wife of the deceased, any adult male member or any other public witness was not joined as a public witness to the recovery. In the absence of any clinching evidence explaining or justifying the lacunae in the case of the Prosecution, the probative value of such a recovery is diluted considerably. The Prosecution has also argued that the Appellant had tried to mislead PW-9/Beena, PW-10/Vikas and PW-18/ Vinod Singh by giving contradictory accounts regarding the whereabouts of the deceased. Arguendo, assuming that this was the case and it did raise strong suspicion, it cannot be said that strong suspicion can take the place of legal proof. The Apex Court in Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91, has held as under:

24. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its



significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide Hari Shanker v. State of U.P. [(1996) 9 SCC 40 : 1996 SCC (Cri) 913] , Bikau Pandey v. State of Bihar [(2003) 12 SCC 616 : 2004 SCC (Cri) Supp 535] and Abu Thakir v. State of T.N. [(2010) 5 SCC 91 : (2010) 2 SCC (Cri) 1258])

25. In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. (Vide Ujjagar Singh v. State of Punjab [(2007) 13 SCC 90 : (2009) 1 SCC (Cri) 272] .)

26. While dealing with a similar issue, this Court in State of U.P. v. Kishanpal [(2008) 16 SCC 73] held as under : (SCC p. 88, para 39)

“39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and



reliable, the absence or inadequacy of motive cannot stand in the way of conviction.”

(emphasis supplied)

34. Similarly, the Apex Court in Digamber Vaishnav v. State of Chhattisgarh, (2019) 4 SCC 522, has held as under:

14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unflinching point to the guilt.

15. This Court in Jaharlal Das v. State of Orissa [Jaharlal Das v. State of Orissa, (1991) 3 SCC 27 : 1991 SCC (Cri) 527] , has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.



16. *In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:*

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and

(iii) 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 it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17. *In Varkey Joseph v. State of Kerala [Varkey Joseph v. State of Kerala, 1993 Supp (3) SCC 745 : 1993 SCC (Cri) 1117] , this Court has held that suspicion is not the substitute for proof. There is a long distance between “may be true” and “must be true” and the prosecution has to travel all the way to prove its case beyond reasonable doubt.*

18. *In Sujit Biswas v. State of Assam [Sujit Biswas v. State of Assam, (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] , this Court, while examining the distinction between “proof beyond reasonable doubt” and “suspicion” has held as under: (SCC p. 412, para 13)*

“13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not



be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.”

(emphasis supplied)

35. Applying the dictum of the Apex Court to the facts of the present case, this Court is of the view that there are critical gaps in the Prosecution’s case that render the chain of circumstances, incomplete. The Prosecution, for instance, has not been able to demonstrate as to how the deceased’s body was transported from Mohan Garden, which was the alleged place of incident, to the Ganda Nala at Sainik Enclave, where the body of the deceased was recovered. Similarly, no discernible motive has been established by the Prosecution which can plausibly explain why the



Appellant would want to kill the deceased. There is a vague assertion that the deceased's wife i.e. PW-9/Beena had an illicit affair with the Appellant, however no evidence or witness has been brought on record to substantiate this averment. As noted above, in cases of circumstantial evidence, motive is significant and evidence of motive forms part of the chain of events in circumstantial evidence.

36. Similarly, PW-9/Beena, who is the wife of the deceased, has stated in her Missing Report dated 25.11.1999 that her husband's height was about 5 feet 4 inches. However, as per the deposition of PW-8/Dr. L.C Gupta the height of body on which he performed the post-mortem on 29.11.1999 was 5 feet 11 inches.

37. PW-8/ Dr. L.C. Gupta conducted the post-mortem on the body of the deceased. His opinion has been exhibited as PW-19/C. The general description of the body and external injuries are as follows:-

“On 29-11-99 I was posted in Civil Hospital Mortuary, Subzi Mandi as Specialist Forensic Medicine. A postmortem was conducted by me upon dead body of 40 years unknown male which was brought by SHO P.S. Nangloi with inquest papers. The dead body was recovered from standing water on 26-11-99, but postmortem was conducted on 29-11-99 after receipt of inquest papers.

Following findings were detected on postmortem examination. It was the dead body of 5 ft. 11" tall wheatish male with average built and nourished, pannies was uncircumcised, rigor mortis passed off, postmortem staining could not be appreciated, eyes were open, conjunctiva congested, mouth was closed and tongue was in between teeth, it was contused with indentation marks at lower aspect, blood froth was present at both nostrils, dead body



was in moderate stage of advance purification without calling of maggots, right upper limb was eaten out postmortemly by some canine animal.

Both lips were contused with mark of indentation, nose was swollen with contusion, fracture was present of nasal bone, multiple ligature marks were present around the neck in its whole length."
(emphasis supplied)

38. There is no explanation for this material discrepancy and the Prosecution has not been able to provide any plausible explanation for the same during the Examination-In-Chief of PW-9/Beena. PW-11/ B.K. Madan, in his deposition has also stated that the deceased's body could not be recognised easily and it was in an advanced state of decomposition.

39. Accordingly, this Court is of the view that the facts which have been established by the Prosecution are not exclusively consistent with the hypothesis of the guilt of the accused. It cannot be said that the evidence relied upon by the Prosecution and circumstances established on that basis are of a conclusive nature and tendency so as to exclude every possible hypothesis except the one that has been sought to be proved. Finally, the chain of evidence of the Prosecution is riddled with inconsistencies and material gaps that are inconsistent with the guilt of the Appellant. It has not been shown in all human possibility that the Appellant had committed the murder of the deceased. The Prosecution has, therefore, failed to establish their case beyond reasonable doubt.

40. In light of the above, the judgment of conviction and order on sentence, passed by the Trial Court, are set aside.



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41. The Appeal is allowed. Pending applications, if any, are disposed of.
42. The Bail Bonds are discharged.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

DECEMBER 15, 2025

Prateek/VR