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Judgment Reserved On:07.05.2024

Judgment Delivered On:24.05.2024

Neutral Citation No. - 2024:AHC:92791-DB

Court No. - 45

Case :- CRIMINAL APPEAL No. - 4350 of 2005

Appellant :- Rajveer Singh
Respondent :- State of U.P.
Counsel for Appellant :- K.K. Dwivedi,R.P. Dwivedi
Counsel for Respondent :- Govt. Advocate,D.N.Wali,Manoj Yadav

Hon'ble Rajiv Gupta,J.
Hon'ble Shiv Shanker Prasad,J.

1. Heard Shri G.S. Chaturvedi, Senior Advocate assisted by Shri Alok Ranjan Mishra, learned counsel for the appellant, learned A.G.A. for the State and perused the record.

2. The instant criminal appeal has been filed against the judgment and order dated 23.9.2005 passed by the Additional Session Judge, Court No. 11, Agra in S.T. No. 832 of 1999, State Vs. Rajveer Singh and another, arising out of case crime no. 207 of 1999 P.S. Dauki, Agra, under section 302 I.P.C., by which the trial court has convicted the appellant under section 302 I.P.C. and awarded the sentence of life imprisonment alongwith fine of Rs. 25000/-

3. As per the prosecution case as unfurled in the F.I.R. lodged by one Surendra Kumar, P.W.1, vide written report Ex. Ka.1 dated 5.8.1999 which was registered vide case crime no. 207 of 1999 under section 302 I.P.C., P.S. Dauki, District Agra, vide G.D. report, Ex. Ka. 4 prepared by PW.4 at the relevant date and time.

The allegations made in the F.I.R. are that on 4.8.1999 at about 8.30 p.m. in the night his father Nem Singh posted as Kanungo, Sadar, District Agra returned back to his house. After taking his meals at about 10.00 p.m., on account of disruption in the electric supply he slept alone on the Chabutara outside the Baithaka. At about 5.00 a.m., his mother Smt. Jamira Devi came out of the house and saw blood flowing below his cot. Above the cot his father was done to death by some unknown persons by wielding some sharp edged weapon on his neck and face. On the noise raised by his mother and on her wailing he alongwith his other family members reached at the place of incident. On the basis of the said written report scribed by the appellant, Rajveer Singh himself an F.I.R was registered against unknown persons at P.S. Dauki, District Agra.

4. The said F.I.R. was registered in the presence of Station Officer, P.S. Dauki, P.W. 6 Satyaveer Singh who was entrusted with the investigation of the said case. The investigating officer thereafter recorded the statement of the first informant and reached at the place of incident and inspected the place of incident, and prepared the site plan. The Investigating Officer further collected the blood stained earth and plain earth from the place of incident and kept it in a container, sealed it and prepared the recovery memo which has been proved and marked as Ex. Ka. 6 and Ex. Ka. 7. A hair strand was also taken in possession from the right palm of the deceased and its fard recovery memo was prepared and marked as Ex. Ka. 8. A small handkerchief lying near the corpse of the deceased was also taken in possession and its fard recovery memo was prepared and marked as Ex. Ka. 9. The investigating officer had also collected the blood stained string of cot and a blood stained pillow and prepared its recovery memo which has been proved and marked as Ex. Ka. 10

and then recorded the statement of witnesses Phool Singh and Giriraj. Thereafter Station Officer conducted the inquest on the person of the deceased and prepared the inquest memo which has been proved and marked as Ex. Ka. 15. Thereafter the dead body of the deceased was wrapped in a cloth and dispatched for post mortem examination by preparing the seal. An autopsy was conducted on the person of the deceased on 5.8.1999. As per the post mortem report , the victim received six injuries on his person. The injuries noted by the Doctor in the post mortem report are as under.

1- कटा हुआ घाव 16 सेमी x 2 सेमी x हड्डी तक गहरा, माथे पर बाई तरफ तथा बाये कान कट चुका था।

2- कटा हुआ घाव 14 सेमी x 2 सेमी x हड्डी तक गहरा, बाई तरफ चेहरे पर।

3- कटा हुआ घाव 16 सेमी x 2 सेमी x गर्दन की गुहा तक गहरा गर्दन के अन्दर।

4- कटा हुआ घाव 2 सेमी x 1 सेमी x हड्डी तक गहरा, दाये हाथ के अंगूठे पर।

5- कटा हुआ घाव 1 सेमी x 1/2 सेमी हड्डी तक गहरा दाये हाथ की अंगुली पर।

6- कटा हुआ घाव 1 सेमी x 1/2 सेमी x हड्डी तक गहरा दाहिने हाथ की रिंग तथा मिडिल अंगुली पर।

On internal examination, the central bone of the head was found fractured and membranes were found congested.

5. Thereafter on 5.8.1999, Investigating Officer recorded the statement of Meera Devi wife of the deceased and Geeta, daughter of the deceased. On 16. 8.1999 the appellant, Rajveer Singh was arrested and his statement was recorded and on his pointing out, an axe was recovered from an open place near the Bithoora. Thereafter blood stained Pyjama and Shirt of the appellant was also recovered on the pointing out of the appellant, Rajveer Singh from his room kept in a box which were taken in possession by Investigating officer and its fard recovery memos

were prepared which have been proved and marked as Ex. Ka. 2 and Ex. Ka.3 respectively.

6. After concluding the investigation, the Investigating Officer submitted the charge sheet against the appellant and one Rakesh which has been proved and marked as Ex. Ka. 13. On submission of the charge sheet, learned Magistrate had taken cognizance of the offence and since the case was exclusively triable by court of sessions made over the case to the court of session for trial where it was registered vide S.T. No. 832 of 1999, State Vs. Rajveer Singh and another under section 302 I.P.C. The trial court thereafter framed the charge against the appellant under section 302 I.P.C; and under section 302/34 I.P.C., against co-accused Rakesh vide order dated 5.1.2000. The said charges were read out and explained to the accused in Hindi who abjured the charges, did not plead guilty and claimed to be tried.

7. During course of trial, prosecution in order to bring home the guilt of the appellant has examined as many as three witnesses of fact P.W.1, P.W.3 and P.W.5 and two other formal witnesses, P.W.4 and P.W.6. Their testimony in brief is enumerated below.

8. P.W.1 Surendra Kumar is son of the deceased. He in his examination in chief has stated that accused Rajveer Singh is his real uncle whereas accused Rakesh is his servant. Nem Singh, the deceased was his father who was working in Tehsil Sadar as Kanungo. On the fateful night between 4/5.8.1999 on account of disruption in the electric supply his father Nem Singh was sleeping all alone on a cot outside his Chabutara. At about 5.00 a.m. in the morning his mother woke up and came out and saw that his father was lying dead and his neck and face was cut and blood had collected below his cot on which his mother raised alarm,

then he along with neighbours reached there. He immediately got a written report scribed by his uncle Rajveer and after putting his signature there on reached at the police station and handed over the written report to the police, on the basis of which a F.I.R. was registered. It is further stated that his father had purchased a plot in the name of his mother i.e. his grand mother and had sold it 2-3 years back for an amount of Rs. 12.00 lacs. His uncle Rajveer Singh used to demand his share, in the said money. On account of which there had been verbal duel between his father and uncle Rajveer Singh as such he used to bear enmity with his father. In his cross examination he has stated that his father was Kanungo in Tehsil, Sadar whereas his another uncle Raghuveer was an agriculturist. It is wrong to state that the accused Rajveer Singh used to look after the agriculture work. Earlier his family was a joint family. However, one year back partition took place between them and his father and his other brothers were given equal shares of the field. He further denied the suggestion that his father being Kanungo had illegally amassed great wealth, on account of which he had number of enemies. On the fateful night, he was sleeping on the roof and his uncle Ranveer and accused Rajveer Singh were in their respective houses. He denied the suggestion that his uncle used to sleep at his tube-well. In the morning on the cries of his mother, he woke up at about 5.00 a.m. After the incident, Ranveer and Rajveer Singh had also reached at the place of incident. However, by that time he had not suspected Rajveer Singh to have committed the incident. On the date of incident, Investigating Officer had recorded his statement, however, in his statement he had not disclosed to the investigating officer that "मैने दरोगा को नही बताया कि मेरे पिता ने एक प्लाट जो दादी के नाम खरीदा था उसे बारह लाख में बेच दिया मेरे चाचा राजवीर हिस्सा मांगते थे और इस बात को लेकर मेरे पिता व चाचा मे कहा सुनी हुई थी और इस कारण राजवीर मेरे पिता से रंजिश मानते थे पहली बार यह बात अदालत में कहा है यह पूछे जाने पर कि आपने उक्त बात दरोगा को क्यो नही बताई कहा कि मां व

बहन ने बताई थी इसलिए मैने दरोगा को नही बताई।". He further stated that at the time of inquest accused Rajveer Singh was present and is also a witness of inquest. On being questioned as to why he had earlier not disclosed the name of Rajveer Singh to the investigating officer he stated that at the earlier point of time he did not suspected him to be an accused. The said suspicion arose after two days, although his mother suspected Rajveer Singh to be involved in the incident. He further denied the suggestion that he is falsely deposing in the case and concealing the true facts.

9. P.W.2, Dr. B.B. Agrawal, is the Medical Officer who conducted an autopsy on the person of the deceased and has noted the injuries which has already been described. The post mortem report is proved and marked as Ex. Ka.2. He further stated that injuries found on the person may be sufficient for his death on 4/5.8.1999 at 5.00 a.m. During cross examination he stated that all the injuries may be caused by some sharp edged object like Farsa, Sword but could not be caused by axe.

10. P.W.3 Ranveer Singh is another brother of the deceased. He in his examination in Chief has stated that the deceased Nem Singh was his elder brother and accused Rajveer Singh is his another brother and the other accused is Rakesh. The incident had taken place about five and half years back. At the relevant time he was sleeping on his roof whereas the deceased was sleeping on the Chabutara of his house. He heard noise at about 12.30 a.m. and had seen Rajveer Singh bathing in the bathroom and washing his clothes. On being questioned he stated that on account of release of buffalo he had gone to tie it. His clothes got dirty on being hit by its tail as such he is taking bath, moreover in the early morning he has to go to his shop, thereafter the witness lied down on his cot. In the morning at 5.00 a.m. his sister-in-law Meera Devi cried loudly that Surendra "your father has been killed

by some one". He was attracted by the loud voice and reached there and found his brother Nem Singh lying dead having injury marks on his neck. When he reached there, Rajveer Singh was not present though number of villagers had reached there. At the relevant time Rajveer Singh was giving fodder to his cattle. He then called Rajveer Singh who stated that "as one sow so shall he reap, he should have died earlier". His nephew then went to lodge the report. Rajveer Singh used to quarrel with his brother Nem Singh in respect of a plot situated at Agra which was purchased by deceased Nem Singh in the name of his mother. After about 11-12 days, the police again reached at his village and recorded his statement and arrested Rakesh and thereafter police brought Rajveer Singh after arresting him. Rajveer Singh gave certain clothes from a box kept in his house. Its recovery memo was prepared by the police which has been proved and marked as Ex. Ka. 2. Thereafter the police came out and from the roof of the Chappar, recovered an axe and also prepared its recovery memo which has been proved and marked as Ex. Ka.3. Axe has been marked as Material Ex. Ka.1 and shirt as Material Ex. Ka.2. He further stated that Nem Singh was having 42-43 Bighas of land in the village having tube-well and he used to manage the entire agricultural activities. He further denied the suggestion that he and his brother often used to stay in the room built at the tube-well and rarely used to come home. He further stated that he did not disclose to the investigating officer that when the villagers gathered at the place of incident, Rajveer Singh was giving fodder to his cattle. Since they were brothers, as such did not disclose the said fact and for the first time is stating it in the court. Rajveer Singh stayed at the place of incident for about two hours when he stated that "as one sow so shall he reap, that he should have died earlier", then too he did not suspect him nor had disclosed this

fact to the investigating officer. Rajveer Singh was present at the time of inquest and also participated in the last rites of the deceased and though he suspected Rajveer Singh to be involved in the incident of murder of Nem Singh, yet he did not disclose this fact to the investigating officer as it was a family matter. He did not met investigating officer for 10-12 days and met police only when Rajveer and Rakesh were arrested. He further denied the suggestion that after 10-12 days of the incident, Surendra and Giriraj had got Rajveer Singh arrested. He further denied the suggestion that relation between Rajveer and Nem Singh deceased were cordial and there was no dispute between them. He further denied the suggestion that after the death of Nem Singh there has been dispute between him, his mother and Rajveer Singh over partition of land. He further denied the suggestion that he and Surendra wanted to usurp the entire immoveable property which was objected to by Rajveer Singh, then they in collusion of the police, got him falsely implicated and arrested. He further stated that it is correct to say that after inquest Rajveer Singh was not seen in the village and only at the time of last rites, was seen. He further denied the suggestion that his brother Nem Singh was Kanungo and on account of making illegal demaracations large number of persons started bearing enmity with him, on account of which he has been done to death. He further denied the suggestion that on account of dispute over partition of property with Surendra son of Nem Singh, he has been falsely implicated.

11. P.W.4 is the Head Moharrir who on the basis of written report had drawn the F.I.R. and also prepared corresponding G.D. entry which has been marked as Ex. Ka.4 and Ka. 5 respectively. However, he has not been cross examined.

12. P.W.5 Meera Devi Alias Amiro Devi is wife of the deceased. She in her statement has stated that Rajveer Singh was her Dewar and co-accused Rakesh was the servant of Rajveer Singh. About six years back on the fateful night her husband returned back at his house at about 8.30 p.m. and after taking his meals slept on the Chabutara whereas she was sleeping in her room. At about 5.00 a.m. when she woke up, she saw her husband lying dead. On her cry his son Surendra and other family members reached there, however, Rajveer Singh did not come and continued to give fodder to his cattles. During cross examination she stated that seeing her husband she was wailing and did not go any where. Prior to the incident, partition has been carried out between them and Rajveer. She further stated that while she was wailing Rajveer did not come there. Rajveer used to quarrel with her husband as such she suspected him. It is wrong to state that there was love and affection between her husband and other brothers rather there was dispute between them. She further denied the suggestion that after the death of her husband she tried to usurp the entire property in the village and in the city Agra on which Rajveer Singh objected and stated that only after Terewahi ceremony, partition will ensue. Treating him to be a hurdle, he has been falsely implicated. It is wrong to state that on the instigation of her son, she has been falsely deposing.

13. P.W. 6, Satyaveer Singh is investigating officer who has conducted the investigation and prepared relevant memos of recoveries including pillow, shirt, and Pyjama, belonging to the accused Rajveer and after concluding the investigation submitted the charge sheet. He has proved various documents including recoveries. He had taken the sample of hair strands but did not sent it for matching with that of the accused. On 7.8.1999, wife of the deceased, had suspected Rajveer Singh to be involved in the

said incident on account of family dispute, however, on 5.8.1999 Surendra had not suspected any one to be involved in the incident. It is true that at the time of inquest the accused was present and is a witness of inquest. On 16.8.1999, accused Rajveer Singh was arrested and crime weapon was recovered from point 'B' near pond which is an open place accessible to all and sundry. It is wrong to state that who actually committed the murder is not known and there was no evidence against Rajveer, as such he colluded with Surendra and falsely implicated Rajveer, so that he may not be able to demand his share in the property.

14. After concluding the evidence, the statement of accused was recorded under section 313 Cr.P.C. and the trial court held that though the case is based on circumstantial evidence and there is no eye witness account of the incident but prosecution has successfully proved its case against the appellant, by relying upon the recovery of crime weapon axe, under section 27 of the Evidence Act coupled with the conduct of the accused in getting recovered his Pyjama and shirt which he was allegedly wearing at the time of incident from his house kept in a box and held that the chain of circumstances stood complete, indicating beyond reasonable doubt that it was the accused-appellant and none other, who committed the murder of his brother Nem Singh. It was further held that the explanation tendered by the appellant u/s 313 Cr.P.C., was found inadequate and as such he is liable to be convicted. Being aggrieved and dissatisfied by the said Judgment and order the instant criminal appeal has been filed.

15. Learned counsel for the appellant has submitted that the instant case is based on circumstantial evidence and the prosecution has failed to prove any incriminating circumstances so as to prove the guilt of the appellant. However, the Trial Court without appreciating the evidence and material on record has

illegally recorded the finding of conviction against the appellant as such the impugned order passed by the trial court is wholly illegal and liable to be set-aside.

16. Learned counsel for the appellant has next submitted that the F.I.R. in the instant case was lodged against unknown person, however, subsequently after two days of the incident, only on the basis of suspicion the name of the appellant has been roped in as an accused.

17. Learned counsel for the appellant has next submitted that from the perusal of the evidence and material on record, it is evident that the appellant was the scribe of the F.I.R. and all throughout remained present in the house and is also a witness of the inquest report. However, subsequently without there being any cogent evidence or material he has been nominated as an accused in the instant case on the basis of suspicion.

18. Learned counsel for the appellant has next submitted that the prosecution has miserably failed to prove the motive against the appellant yet the trial court by relying upon an imaginative and after thought motive, that there was dispute between the brothers over partition of property and sharing of sale proceeds of the house which was in the name of his mother, had illegally recorded the finding of conviction against the appellant which is bad in law and is liable to be set-aside.

19. Learned counsel for the appellant has next submitted that even the recovery of axe and his Pyjama and shirt which he was allegedly wearing at the time of incident at the instance of the accused appellant has not been put to him while recording his statement under section 313 Cr.P.C., in the absence of which the finding of conviction recorded by the trial court against the appellant is wholly illegal and is liable to be set-aside.

20. Learned counsel for the appellant has next submitted that the prosecution has miserably failed to prove the chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused as such the finding of conviction recorded by the trial court is wholly illegal and is liable to be set-aside.

21. Learned counsel for the appellant has next submitted that merely on the basis of suspicion, howsoever strong it may be, the accused-appellant can not be convicted.

22. Learned counsel for the appellant has next submitted that the alleged recovery of axe and clothes of the accused from his house kept in a box have not been proved as required under section 27 of the Indian Evidence Act as well as cannot be said to be relevant under sec. 8 of the evidence Act, as held by the trial court on the basis of which he has been convicted. The impugned Judgment and order is therefore wholly illegal and liable to be set aside.

23. Learned counsel for the appellant has next submitted that even disclosure statement on the basis of which the recovery is alleged to have been made has not been proved by the Investigating Officer as per the settled principle of law and in the absence of which the evidence of recovery is inadmissible in law. However, the trial court by placing implicit reliance on the said recovery has illegally recorded the finding of conviction against the appellant which is bad in law and is liable to be set-aside.

24. In order to buttress his argument, learned counsel for the appellant has placed implicit reliance upon the case reported in ***[1966]1 SCR 134, Aghnoo Nagesia Vs. State of Bihar*** and has submitted that the recovery alleged to be made on the pointing out of the appellant is inadmissible and as such can not be made ground for convicting the appellant.

25. Per contra, learned A.G.A. has submitted that the motive against the appellant has been cogently and convincingly proved by the prosecution and as such the finding of conviction recorded by the trial court is just, proper and legal and do not call for any interference by this Court.

26. Learned A.G.A has further submitted that though the recovery of axe alleged to be made on the disclosure statement of the appellant may not be said to be proved under section 27 of the Evidence Act, yet while discarding the evidence in the form of memorandum of discovery his conduct in getting the clothes recovered from his house kept in a box would be an admissible link in the chain of circumstance and would be relevant u/s 8 of the Evidence Act, on the basis of which the appellant complicity in the instant case stands proved as rightly held by the trial court in recording the finding of conviction against the appellant which in the facts and circumstance of the case is just proper and legal and do not call for any interference.

27. Learned A.G.A. has further submitted that in the instant case, the appellant absconded from the scene of incident and as such is abscondance is also indicative of his involvement in the instant case and points towards guilt of the accused.

28. Having considered the rival submissions made by learned counsel for parties and appreciating the evidence and material on record, it is evident that the instant case is based on circumstantial evidence and a blind murder committed during night hours and none of three witnesses P.W.1, Surendra, P.W.3, Ranveer Singh and P.W.5, Meera Devi who is the son, brother and wife of the deceased have witnessed the incident at all and only in the morning when the dead body of the victim was found the F.I.R. has been lodged against unknown persons. However, subsequently after two days of the incident, the appellant

alongwith one Rakesh has been implicated as an accused merely on the basis of suspicion.

29. It is germane to point out here that the appellant was throughout present in the house when the deceased wife cried seeing the dead body of her husband. Furthermore, the appellant is the scribe of the F.I.R. which has been lodged by P.W.1 and remained present at the time of inquest and is also a witness of inquest and also participated in the last rites as pointed out by P.W.2. However, subsequently, on the basis of suspicion he has been made an accused stating that he used to quarrel with his brother over partition of property and for not sharing the sale proceeds of the plot which was in the name of his mother. It is further germane to point out here that an imaginative motive in the present case has subsequently been tried to be cooked up in the statement of P.W.1 wherein for the first time before the court he has stated that his father had purchased a plot in the name of his grand mother and had sold it for a sum of Rs. 12.00 lacs., 2-3 years prior to the incident. Accused Rajveer Singh used to quarrel with his father over giving of his share in the sale amount, which was the bone of contention between his father and accused Rajveer Singh, consequent to which he used to bear enmity with him. However, in his cross examination it has been categorically stated by P.W. 1, that the said factum was not disclosed to the investigating officer while recording his statement u/s 161 Cr.P.C., and has been stated for the first time in the court which clearly shows that in respect of motive there is clear contradiction in the statement of the witnesses which goes to the root of the case. Thus, from the said circumstances, it is evident in the instant case that motive has not at all been cogently and convincingly proved. It is well settled principle of law that in a case of circumstantial evidence motive plays very pivotal role and non proving the

factum of motive creates serious dent in the prosecution story as in the present case, and make the entire prosecution story doubtful.

30. Furthermore it is evident from the material on record, that the instant case is based on circumstantial evidence and the prosecution has miserably failed to prove the chain of evidence so far 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. Moreover, the law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra,*** wherein this Court held thus:

"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 [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 [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." It is also settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

Learned Amicus-curiae further relied upon a case reported in ***(2010) 8 SCC 593 G. Parshwanath Vs. State of Karnataka,*** wherein it has been held as under :

> *"23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact*

leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

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

show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

31. Now if we analyse the evidence in the instant case on the basis of principle of law as discussed above, we find that there is absolutely no circumstance proved by the prosecution so as to establish the guilt of the appellant. It is further evident from the evidence that only on the basis of suspicion an attempt has been made to falsely implicate the accused in the instant case. It is well settled principle of law that suspicion, howsoever strong it may be, can not take place of prove as in the present case.

32. Now coming to the circumstance regarding recovery of blood stained Axe, and blood stained clothes alleged to be made on the basis of disclosure statement made by the accused. It is germane to point out here that the accused Rajveer Singh was arrested by the police on 16.8.1999 and his disclosure statement is to have been recorded and thereafter on its basis clothes having blood stained are said to have been recovered from a box kept inside the house. Thereafter an axe is said to have been recovered by the police from the chappar. So far as the recovery of an axe is concerned, it is evident from the evidence adduced that the same has been recovered by the police itself from chappar of the appellant and not at his pointing out. It is further germane to point out here that even in the statement of the I.O. it is pointed out that the said axe has been recovered from a open place accessible to all and sundry which further makes the recovery doubtful. Recently, Hon'ble Apex Court in a decision

in ***Criminal Appeal No (S). 985 of 2010, Babu Sahebagouda Rudragoudar and others Vs. State of Karnataka*** had dealt the requirement under law so as to prove a disclosure statement under section 27 of the Indian Evidence Act.

33. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in the case of ***State of Uttar Pradesh v. Deoman Upadhyaya.***

34. Thus, when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The Investigating Officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

35. As per Section 60 of the Evidence Act, oral evidence in all cases must be direct. The section leaves no ambiguity and mandates that no secondary/hearsay evidence can be given in case of oral evidence, except for the circumstances enumerated in the section. In case of a person who asserts to have heard a fact, only his evidence must be given in respect of the same.

36. The manner of proving the disclosure statement under Section 27 of the Evidence Act has been the subject matter of

consideration by this Court in various judgments, some of which are being referred to below.

37. In the case of ***Mohd. Abdul Hafeez v. State of Andhra Pradesh***, it was held by this Court as follows:-

"5. ....If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person."

38. Further, in the case of ***Subramanya v. State of Karnataka***, it was held as under: -

"82. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

"27. How much of information received from accused may be proved. —

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

83. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

84. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panch-witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch-witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law

expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter." (emphasis supplied)

39. Similar view was taken by this Court in the case of ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh***, wherein this Court held that mere exhibiting of memorandum prepared by the Investigating Officer during investigation cannot amount to proof of its contents. While testifying on oath, the Investigating Officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement.

40. Now applying the said principle in the instant case, we find that none of the aforesaid procedure laid down by Hon'ble Apex Court for proving the disclosure statement has been followed. There is no description at all of the conversation which had transpired between Investigating Officer and the accused which was recorded in the disclosure statements. Thus, these disclosure statements can not be read in evidence and the recoveries made in furtherance thereof are non est in the eyes of law. Thus, finding of trial court while recording the conviction against the appellant in respect of recovery to be proved, is against the settled proposition of law as laid down by Hon'ble Apex Court and therefore it can not be sustained and is liable to discarded.

41. Now we may discuss the submission of learned A.G.A., regarding the manner in which recovery of blood stained Pyjama and blood stained shirt is said to have been made at the instance of the accused from his house kept in a box

which may be relevant circumstance under section 8 of the Evidence Act as held by Hon'ble Apex Court in a recent decision in ***Criminal Appeal No. 739 of 2017, Shahaja @ Shahajan Ismail Mohd. Shaikh Vs. State of Maharasthra,*** wherein it has been held that even while discarding the evidence in the form of discovery panchnama the conduct would be relevant under section 8 of the Act. The evidence of discovery would be admissble as conduct under section 8 of the Act quite apart from the admissibility of the disclosure statement under section 27, as this Court observed in AN. Venkatesh V. State of Karnataka, (2005) 7 SCC 714,:

"By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand Vs. State (Delhi Admn.) [(1979) 3 SC 90]. Even if we hold that the disclosure statement made by the accused appellants (Ex. P14 and P15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8."

42. In the ***State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600***, the two provisions i.e. Section 8 and Section 27 of the Act were elucidated in detail with reference to the case law on the subject and apropos to Section 8 of the Act, wherein it was held:

“Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either previous or subsequent conduct. There are two Explanations to the Section, which explains the ambit of the word 'conduct'. They are:

Explanation 1 : The word 'conduct' in this Section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other Section of this Act.

Explanation 2 : When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant. The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. The Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute 'conduct' unless those statements "accompany and explain acts other than statements". Such statements accompanying the acts are considered to be evidence of res gestae. Two illustrations appended to Section 8 deserve special mention. (f) The question is, whether A robbed B. The facts that, after B was robbed, C said in A's presence --the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it,

are relevant. We have already noticed the distinction highlighted in Prakash Chand's case (supra) between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 Cr.P.C. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as 'conduct' under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand's case. In Om Prakash case (supra) this Court held: Even apart from the admissibility of the information under Section, the evidence of the Investigating Officer and the Panchas that the accused had taken them to PW11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW11 himself would be admissible under Section 8 of the Evidence Act as 'conduct' of the accused".

43. However, it would be relevant to note that the Hon'ble Apex Court in the said Judgment has further held that in the aforesaid context, we would like to sound a note of caution. Although the conduct of an accused may be a relevant fact under Section 8 of the Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though

may be relevant under Section 8 of the Act, cannot form the basis of conviction.

44. Even the case cited by learned counsel for the appellant reported in [1966] 1 SCR 134 lends support to his case and makes the recoveries liable to be discarded. It is further germane to point out here that the recovers said to be made at the pointing out of the appellant has not been put at all to the accused in his statement under section 313 Cr.P.C. which further seriously dents the prosecution story and makes the appellant liable to be acquitted. It is well settled principle of law that all incriminating circumstances against the appellant should necessarily be put to the accused and if any circumstance on the basis of which finding of conviction is said to be recorded is not put to the accused to offer his explanation then the said circumstance would create serious dent in the prosecution story and would entitle the accused to be acquitted as in the instant case.

45. It is further germane to point out here that the abscondence of the accused at the relevant point of time from the place of incident otherwise would also not be a material ground to hold the conviction of the appellant. The Hon'ble Apex Court in several of its decisions has held that "Mere abscondence by itself does not necessarily lead to a firm conclusion of guilty mind. An innocent man may also abscond in order to evade arrest, as in the light of prevailing situation, such an action may be part of natural conduct of accused, as held by the Hon'ble Apex Court in its decision reported in ***(2013) 12 SCC 406 Sujit Biswas Vs. State of Assam***.

Thus on the basis of the aforesaid facts and surrounding circumstances, discussed above we are of the opinion that only on the basis of abscondence of the accused the appellant

cannot be held to be guilty in the instant case as such in the light of the settled proposition of law laid above the said argument of the learned AGA does not hold much significance and is liable to be repelled.

46. Now if we recapitulate the entire facts and circumstances of the case in the light of the above principle of law in the instant case, we find that the evidence of discovery may be admissible as conduct under section 8 of the Act as held by the trial court but at the same time it has been held by Hon'ble Apex Court, sounding a note of caution, wherein it has been held that the conduct of an accused may be relevant fact under section 8 of the Act, yet the same, by itself, cannot be a ground to convict him or hold guilty and that too, for a serious offence like murder. Thus, in the backdrop of the circumstances even considering section 8 of the Evidence Act. Conviction of the appellant under section 302 I.P.C., can not be sustained in the eye of law and is liable to be set-aside.

47. Thus, from the entire discussions, we find that prosecution has miserably failed to prove its case against the appellant and the evidence adduced is in fact in admissible as discussed above. Even from the entire evidence it can not be said that in all human probability act must have been done by the accused particularly when there were two other male members in the family present in the house at the time of incident and the instant case, being the case of a blind murder.

48. Thus, in view of the foregoing discussions, we are of the opinion that the prosecution has miserably failed to prove its case against the appellant and he is entitled for benefit of doubt. The finding of conviction recorded by trial court is not just, proper and legal and is liable to be set-aside and the appellant is acquitted of the charges framed against him by

allowing the present appeal. He is on bail. His bail bonds are cancelled and sureties are discharged, subject compliance of provision u/s 437 A Cr.P.C, within 15 days from the date of the Judgment.

49. This criminal appeal is accordingly **allowed**.

Order Date :- 24.5.2024

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