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

Date of Decision: 1st April, 2014

\+ **CRL.A.433/1999**

MOHD. SHAHID ..... Appellant
Through: Mr. Mukesh Kalia, Advocate

versus

STATE ..... Respondent
Through: Ms. Richa Kapoor, APP

\+ **CRL.A.456/1999**

MUKHTIYAR AHMED ..... Appellant
Through: Mr. Arun Srivastava, Advocate

versus

STATE ..... Respondent
Through: Ms. Richa Kapoor, APP

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CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Appellant Mohd. Shahid and Mukhtiyar Ahmed have filed separate appeals bearing No.Crl.A.433/1999 and Crl.A.456/1999 challenging the common judgment and order on sentence dated 2nd

August, 1999 and 4th August, 1999 respectively passed by the learned Additional Sessions Judge, Delhi in Sessions Case No. 124/97 arising out of FIR No.288/97, PS Kamla Market whereby the appellants were convicted under Section 302/34 IPC as well as under Section 27 and 25 of Arms Act and were sentenced to undergo life imprisonment and fine of Rs.1,000/- each, in default, to undergo six months rigorous imprisonment under Section 302/34 IPC and to undergo rigorous imprisonment for 6 months and fine of Rs.200/- each, in default, one month rigorous imprisonment under Section 25 of Arms Act and further sentence to undergo RI for two years and to pay a fine of Rs.500/- each, in default, three months RI under Section 27 of Arms Act. Substantive sentences of imprisonment were to run concurrently. The appellants were granted benefit of Section 428 of the Code of Criminal Procedure, 1973.

2. Prosecution case, succinctly stated, is as follows.

3. On 9th October, 1997 Constable Satish Kumar (PW14) was at Picket Police Booth, Zakir Hussain College from 9:00 AM to 9:00 PM along with Constable Udai Veer Singh. At about 7:30 PM, Constable Udai Veer Singh went to police station. Constable Satish saw one boy

aged about 20 years with his hand on his abdomen. The injured informed Constable Satish Kumar that a quarrel had taken place between him and some boys of G.B. Road few days back and they stabbed him and escaped. The injured further informed him that his cycle and thaila were lying across the road and after saying so, he became unconscious. Constable Satish took him to JPN Hospital in a rickshaw and was immediately taken to operation theatre. Intimation regarding admission of injured in JPN Hospital was sent by Constable Mitender Kumar (PW15) posted as the duty constable to the police station Kamla Market. On receipt of this information, Head Constable Mahipal Singh (PW3) recorded DD No.18A Ex.PW3/A and handed over the same to SI Sanjay Singh (PW20) who went to the hospital. Thereafter, Inspector Hanuman Singh (PW23) also reached the hospital where he met SI Sanjay Singh and Constable Satish Kumar who informed him that injured had died in operation theatre. Since there was no eye witness in the hospital Insp. Hanuman Singh along with Constable Rajesh and Constable Satish Kumar reached at JLN Marg, Zakir Hussain College where also no eye witness was available. One cycle with thaila and blood nearby that cycle was found lying

adjacent to Ramlila Ground, Gate No. 3. He recorded statement of Constable Satish Kumar Ex.PW3/C on the basis of which FIR No. 288/97 Ex.PW3/D was registered. Inspector Hanuman Singh got the place of incident photographed, prepared the site plan Ex.PW23/A, seized cycle, blood and blood stained earth along with thaila. Clothes of the deceased were handed over by SI Sanjay Singh which was seized vide memo Ex.PW14/C.

4. It is further the case of prosecution that on the next day, accused Mukhtiyar Ahmed was arrested from railway godown in the presence of public witness Abdul Nadeem. He made a disclosure statement Ex.PW18/B and got recovered dagger and his blood stained pant and shirt which he was wearing at the time of incident lying under the malba. The same were taken into possession vide memo Ex.PW18/C.

5. On 31st July, 1997 accused Mohd. Shahid was apprehended from railway godown. He was arrested. A disclosure statement Ex. PW11/A was made by him pursuant to which he got recovered one knife. During the course of investigation, the exhibits were sent to FSL. After completing investigation, charge sheet was submitted

against the appellants.

6. In order to substantiate its case, prosecution has examined 24 witnesses. All the incriminating evidence was put to the accused persons while recording their statement under Section 313 Cr.P.C. wherein they have pleaded their innocence and alleged false implication in this case. Accused Mukhtiyar Ahmed examined DW1 Zahur Ali who has deposed that accused was picked up from his house on 10th July, 1997. Appreciation of evidence thus assembled at the trial led the trial court to the conclusion that the appellants had committed offences punishable under the provisions with which they stood charged and accordingly convicted and sentenced as mentioned above.

7. Aggrieved by the judgment and order passed by the trial court, the appellants have preferred separate appeals.

8. We have heard Mr. Arun Srivastava, learned counsel for the appellant Mukhtiyar Ahmed and Mr. Mukesh Kalia, Advocate for appellant Mohd. Shahid and Ms. Richa Kapoor, learned Additional Public Prosecutor for the State.

9. Admittedly, there is no eye-witness to the incident and the case

of prosecution rests on circumstantial evidence. The tests applicable to cases based on circumstantial evidence are fairly well-known. The decisions of Hon'ble Supreme Court recognising and applying those tests to varied fact situation are a legion. Reference to only some of the said decisions should, however, suffice.

10. In ***Sharad Birdhichand Sarda*** *v.* ***State of Maharashtra,*** **(**1984) 4 SCC 116, Hon'ble Supreme Court declared that a case based on circumstantial evidence must satisfy, the following tests:

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

11. In ***Aftab Ahmad Ansari v. State of Uttaranchal,*** (2010) 2 SCC 583, it was observed:

> *"13. 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 must be proved individually and only thereafter the court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the 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/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be."*

12. What, therefore, needs to be seen is whether the prosecution has established the incriminating circumstances upon which it places reliance and whether those circumstances constitute a chain so complete as not to leave any reasonable ground for the Appellant to be found innocent.

13. The circumstances relied upon by the prosecution primarily are:

(i) Motive

(ii) Recovery of knife at the instance of appellant Mohd. Shahid.

(iii) Recovery of dagger and blood stained clothes of appellant Mukhtiyar Ahmad at his instance.

14. We shall take each of the circumstances relied upon by the prosecution in seriatum:-

Motive

15. It is the case of prosecution that on 2nd July, 1997, the cycle of deceased Sudhir @ Sonu hit against both the accused who were going on foot as a result of which a quarrel took place. The matter was, however, pacified with the intervention of Constable Pawan Kumar who separated both the parties. The incident was witnessed by Ravinder Singh and Raju.

16. In order to substantiate the incident of 2nd July, 1997, prosecution has examined PW1 Suresh Kumar Tiwari, PW8 Ravinder Singh, PW19 Raju and PW21 Constable Pawan Kumar.

17. PW1 Suresh Kumar Tiwari is the brother of the deceased, who identified the dead body of his brother in LNJP hospital. Besides that he deposed that on 2nd July, 1997 his brother Sonu informed him that he had a quarrel with two boys, namely, Shahid and Mukhtiyar on account of hitting cycle against Mukhtiyar when he was going somewhere.

18. PW8 Ravinder Singh is the employer of the deceased. According to him, the deceased was working in his office for serving water and cleaning work three months prior to the incident. However,

no incident took place previously with the deceased and nothing had happened with the deceased as per his knowledge. Since the witness did not support the case of prosecution, he was cross-examined by learned Public Prosecutor for the State and he denied having made any statement before the police.

19. PW19 Raju was running a tea shop. This witness has deposed that Sonu was working in a shop near his shop. On 2nd July, 1997, cycle of Sonu hit against both the accused who were going on foot. They quarrelled with Sonu. Constable Pawan Kumar came and separated both the parties after slapping them. Later on, he came to know that Sonu was killed by both the accused.

20. PW21 Constable Pawan Kumar has testified that on 2nd July, 1997, his duty was at PP Sahaganj, GB Road. He was standing outside police booth at GB Road when he heard noise in front of shop No. 53, GB Road and several persons gathered there. He went there and saw accused Shahid and Mukhtiyar quarrelling with Sudhir @ Sonu. He pacified and separated them. PWs Ravinder and Raju were also present there at that time.

21. It is not disputed that the accused persons were not known to

any of the witnesses from before. Under the circumstances, it was incumbent upon the Investigating Officer of the case to have arranged Test Identification Parade of the accused persons after their arrest.

22. The object of conducting a Test Identification Parade is two-fold. First is to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who are seen by them in connection with the commission of the crime. Second is to satisfy the Investigating Authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. The purpose of prior test identification, therefore, is to test and strengthen the trustworthiness of the witness. It is accordingly considered a safe rule of prudence to generally look for corroboration of sworn testimony of the witness in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings.

23. In ***Sk. Hasib v. State of Bihar***, 1972 CriLJ 233 Hon'ble Supreme Court observed:

> "...The purpose of test identification is to test that evidence, the safe rule being that the sworn testimony of the witness in Court as to the identity of the accused who is a stranger to him, as a general rule, requires corroboration in the form of an earlier identification proceeding..."

24. In ***Rameshwar Singh v. State of J & K,*** 1972 Cri LJ 15, it was observed:

> *"... It may be remembered that the substantive evidence of a witness is his evidence in court, but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after the former's arrest is of vital importance because it furnishes to the investigating agency an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial."*

25. In ***Suresh Chandra Bahri v. State of Bihar***, 1994 Crl. LJ 3271, Hon'ble Supreme Court observed:

> *"It is well settled that substantive evidence of the witness is his evidence in the court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. From this point of view it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards were effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. It would, in addition, be fair to the witness concerned also who was a stranger to the accused because in that event the chances of his memory fading away are reduced and he is required to identify the alleged culprit at the earliest possible opportunity after the occurrence. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. But the position may be different when the accused or a culprit who stands trial had been*

seen not once but for quite a number of times at different point of time and places which fact may do away with the necessity of TIP."

26. No such Test Identification Parade of the accused persons were got conducted by the Investigating Officer of the case. None of the witnesses were known to the accused persons from before. Although the substantive evidence of the witnesses is their evidence in the Court if that evidence is found to be reliable then absence of corroboration by test identification would not be fatal. That being so, it is to be seen whether the evidence of the witnesses are reliable or not.

27. So far as the testimony of PW1 Suresh Kumar Tiwari is concerned, his testimony is hearsay as according to him, he was informed by the deceased on 2nd July, 1997 regarding quarrel with Shahid and Mukhtiyar on account of hitting the cycle against Mukhtiyar when he was going somewhere. He is otherwise not an eye witness to the incident. His testimony being hearsay is inadmissible in evidence.

28. So far as PW8 Ravinder Singh is concerned, this witness has absolutely not supported the case of prosecution and even his cross examination by learned Public Prosecutor could not elicit anything to

substantiate the case of prosecution.

29. PW19 Raju claims to be an eye-witness of the incident and according to him, due to hitting of the cycle of Sonu, quarrel took place between him and accused persons which was sorted out by Constable Pawan Kumar. The witness, however, did not support the case of prosecution in all material particulars, therefore, he was cross-examined by learned Public Prosecutor for the State. In cross-examination by the learned Public Prosecutor, he deposed that both the accused persons were not known to him from before nor he made any such statement to the police. He also denied that accused Mukhtiyar Ahmed used to come to his shop to have tea. Despite the fact that his attention was drawn by the learned Public Prosecutor for the State towards the accused Mukhtiyar, the witness could not identify him and went on stating that the accused persons were not known to him from before. In cross-examination by learned counsel for the accused, he denied that no incident took place on 2nd July, 1997 or that he cannot identify the accused. Under the circumstances, the testimony of this witness is not consistent and is very shaky, therefore, no implicit reliance can be placed on the same.

30. PW21 Constable Pawan Kumar has, however, deposed that the accused persons were quarrelling with Sudhir @ Sonu. He pacified and separated them. As such, at the most, the testimony of this witness revealed that on 2nd July, 1997, when the deceased was going on his cycle, he hit against the accused Mukhtiyar. Thereupon a quarrel took place which was, however, pacified then and there by Constable Pawan Kumar. This incident was on such a trivial issue that it cannot furnish the motive for commission of murder of the deceased. Moreover, if the testimony of PW1 Sudhir Kumar Misra is believed then on the date of incident itself, the deceased was aware of the names of the accused persons. However, as per the rukka Ex. PW3/B which was recorded on the statement of Constable Satish Kumar, the deceased came with injury on his abdomen and on inquiry, he only revealed that boys of GB Road with whom a quarrel had taken place few days back, gave knife blow and escaped. There was no mention of the names of the boys with whom the quarrel had taken place earlier and who stabbed him. For the same reasons, MLC Ex.PW17/A prepared by Dr. Vikas Rampal (PW17) only records the history as given by Constable Satish Kumar that the patient had come

in front of him while he was on beat duty, muttered something and collapsed.

31. Under the circumstances, although as per statement of Costable Pawan Kumar, a quarrel has taken place between deceased and two boys on 2.7.1997 but it is not established beyond reasonable doubt that quarrel was between the deceased and the accused persons. Even if it is taken that such a quarrel had taken place on 2nd July 1997, between accused persons and deceased, it was on such a trivial issue that the same cannot furnish a motive to do away with deceased. Suffice it to say that the motive for the alleged murder is as weak as it sounds illogical to us. It is fairly well settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence.

32. In ***Tarseem Kumar v. Delhi Admn.,*** AIR 1994 SC 2585, Hon'ble Supreme Court pointed out that where the case of prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the Court the motive loses its importance. But in a case which is based on circumstantial evidence, motive for

committing the crime on the part of the accused assumes greater importance. In ***Munish Mubar v. State of Haryana,*** (2012) 10 SCC 464, it was reiterated that in a case of circumstantial evidence, motive assumes great significance and importance, for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof.

33. Similar view was taken in ***Sukhram v. State of Maharashtra***, (2007) 3 SCC 502, ***Sunil Clifford Daniel (DV) v. State of Punjab,*** (2012) 8 SCALE 670, ***Pannayar v. State of Tamilnadu by Inspector of Police***, (2009) 9 SCC 152, ***Rishipal v. State of Uttarakhand,*** 2013 II AD (SC) 103. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside.

34. Last seen evidence was sought to be proved through the testimony of PW19 Raju for proving that both the accused came to his shop on 10th July, 1997 at about 7:30 PM and stood separately; when Sudhir @ Sonu went to GB Road on a cycle towards Ajmeri Gate then they followed him and at about 7:40 PM, they came to his shop and informed, that they had taken revenge of the incident dated 2nd July,

1997 by stabbing Sonu with knife in Ramlila Ground and had taught him a lesson. However, the witness denied having made any such supplementary statement on 22nd August, 1997 to the police. As such, even the "last seen theory" is not substantiated.

Recovery of knife at the instance of accused Mohd. Shahid.

35. It is the case of prosecution that on 31st July, 1997, accused Mohd. Shahid was apprehended from railway godown who was already known to the police officials as he was *Bad Character* of Police Station Kamla Market. He made a disclosure statement Ex.PW11/A regarding concealment of the weapon of offence, i.e., knife in a box in his house and that he can get the same recovered. Thereupon, he led the police officials to his house and pointed out the place where he concealed the knife and got recovered the same. Sketch of the knife Ex.PW11/B was prepared and it was taken into possession vide memo Ex.PW11/C.

36. Recovery of this knife has been challenged by the learned counsel for the appellant on the ground that the accused was apprehended from a public place, i.e., railway godown, however, no independent witness was joined either at the time of apprehension of

accused or at the time of recovery of weapon of offence. Moreover, there was no blood on the knife. As such, it was submitted that the recovery of knife at the instance of the accused is not proved. Even otherwise, the same does not connect him with the commission of the crime. It was further submitted that even if it is not proved that knife which was allegedly recovered from accused was the same which was sent to the doctor as the sketch of the knife prepared by the Investigating Officer does not show any embroidery on its handle and the measurement was 24 cms, however, the Doctor prepared the sketch of knife Ex.PW23/K which shows various patterns of flowers at the handle and measurement is 24.1 cms.

37. The submissions made by learned counsel for the appellant has substantial force, inasmuch as there is no independent witness to the recovery of knife alleged to have been effected at the instance of accused. There was no dearth of independent witnesses, inasmuch as, the accused was apprehended from near railway godown. Admittedly, no effort was made to join any independent witness either at the time of apprehension of the accused or at the time of recovery. No effort was made to call any neighbour to join the investigation as

contemplated under Section 100 of the Code of Criminal Procedure, 1973. Even the father of the accused who was present in the house was not asked to join the proceedings and the recovery memo Ex.PW11/C does not bear either the signatures of the father of accused or accused himself. Even if it is taken that the omission to show embroidery on the handle of knife and difference in the measurement is trivial in nature, even then, no blood was found on the knife. The knife was sent to the doctor who conducted post-mortem examination, however, the concerned doctor has not been examined. The opinion has merely been exhibited in the statement of Investigating Officer of the case. Even the weapon of offence was not shown to Dr. P.C. Dixit (PW24) who had come to depose in place of Dr. A.P. Singh to prove the post-mortem report Ex.PW23/H to ascertain as to whether the injuries on the person of the deceased were possible by the knife which was allegedly recovered at the instance of the accused.

38. Under the circumstances, first the recovery of knife at the instance of the accused Mohd. Shahid is not proved beyond reasonable doubt, even otherwise, it is not established that the knife

which was recovered at the instance of accused Mohd. Shahid was the weapon of offence which was used in the commission of crime.

Recovery of weapon of offence and blood stained clothes at the instance of accused Mukhtiyar Ahmad

39. It is the case of prosecution that on 11th July, 1997, accused Mukhtiyar Ahmed was arrested on the pointing out of Constable Pawan Kumar from Railway godown area in the presence of a public witness Abdul Nadeem. He was interrogated and he made a disclosure statement Ex.PW18/B and got recovered a dagger Ex.P1 and his blood stained pant and shirt lying under the malba. Sketch of the dagger Ex.PW18/D was prepared and the dagger as well as the blood stained clothes were seized vide recovery memo Ex.PW18/C.

40. This recovery is alleged to have been effected in the presence of PW18 Abdul Nadeem, PW21 Constable Pawan Kumar and PW23 Inspector Hanuman Singh. Testimony of PW18 Abdul Nadeem was challenged by learned counsel for the appellant on the ground that this witness has not fully supported the case of prosecution. This witness is at the mercy of the police officials in running the hotel, as such, he has been set up as a witness by the prosecution. Credibility of the witness was also challenged on the ground that he is facing criminal

trial in other cases and, as such, no reliance can be placed on the testimony of such a witness. The remaining two witnesses are police officials who are interested in the success of the case and, therefore, bound to depose in favour of prosecution. It was submitted that it was a blind murder case and in order to solve the same, the accused has been falsely implicated in the case.

41. Learned Public Prosecutor for the State, however, submitted that the recovery of blood stained clothes of the accused and the dagger recovered at the instance of accused is duly proved. Moreover, the same were sent to FSL along with the clothes of the deceased, seat of bicycle, sample earth taken from the spot and blood stained gauze and as per the report Ex. PW23/G, the blood was found to be of human origin and the weapon of offence recovered at the instance of Mukhtiyar Ahmed and his blood stained clothes bore the same blood group as that of the deceased and, therefore, it was submitted that this is a strong incriminating piece of circumstance against the accused to connect him with the crime.

42. PW18 Abdul Nadim has deposed that he was coming from Farash Khana and was going to Ajmeri Gate, GB Road. Constable

Pawan Kumar and SHO Hanuman Singh met him on GB Road and told him that Mukhtiyar is to be arrested. Thereafter, he deposed that he does not know anything else about the case. He was cross-examined by learned Public Prosecutor for the State and in cross-examination, he admitted that accused Mukhtiyar was arrested in his presence by the police at the instance of Constable Pawan Kumar inside railway godown in the area of PS Kamla Market on the basis of secret information. He denied that any disclosure statement Ex.PW18/B was made by the accused that he can get dagger and clothes smeared with blood recovered lying inside the railway godown concealed in a malba. However, he admitted that disclosure statement Ex. PW18/B bears his signatures. He further went on deposing that the dagger and clothes were in the hands of the constable. Later on, he deposed that dagger Ex.P1 and clothes Ex.P2 and Ex.P3 were got recovered by Mukhtiyar from inside railway godown kept concealed under malba. In cross-examination by learned counsel for the appellant, he admitted that at the time of incident, he was a clerk and now he is running a hotel at Ajmeri Gate which comes within the jurisdiction of PS Kamla Market. This hotel was got

opened with the help of Constable Jaspal of PS Kamla Market. He admitted that he is not in possession of any licence to run the hotel nor is paying tehbazari of the said hotel. According to him, after recovery of dagger and clothes, the same were sealed in a parcel with a rubber seal and seal after use was handed over to him which he returned after two days to the SHO. He admitted that he was facing criminal case with the tenant and two other cases against the tenant and relatives. Although, he denied the suggestion that he has been utilized by police for the purpose of witness in different cases but admitted that police does not harass him to run the khokha. A perusal of testimony of this witness goes to show that the witness is running his hotel at the mercy of police officials without any licence or paying any tehbazari. Besides that, he has been changing his stand time and again. He was not totally relied upon by the prosecution. As such, testimony of this witness requires to be scrutinized with circumspection.

43. The police officials, however, have deposed regarding the recovery at the behest of accused. It is, therefore, to be seen whether the same are sufficient to connect him with crime.

44. The weapon of offence and blood stained clothes along with

other articles were sent to FSL and as per report Ex.PW23/G given by Dr. Rajender Kumar, Senior Scientific Officer, human blood of 'AB' group was found on the same which matched with the blood group of deceased.

45. The recoveries of blood-stained clothes and weapon of offence at the instance of the appellant, however, has to be viewed in light of various decisions of the Supreme Court where such kind of recoveries have been held to be very weak evidence.

46. In the decision reported as AIR 1963 SC 1113, ***Prabhoo v. State of U.P.*** recovery of a blood-stained shirt and a dhoti as also an axe on which human blood was detected was held to be extremely weak evidence. Similarly, in the decision reported as (1977) 4 SCC 600 (1) ***Narsinbhai Prajapati v. Chhatrasinh Kanji***, the recovery of a blood-stained shirt and a dhoti as also the weapon of offence a dhariya were held to be weak evidence. In the decision reported as AIR 1994 SC 110 ***Surjit Singh v. State of Punjab*** the recovery of a watch stated to be that of deceased and a dagger stained with blood of the same group as that of the deceased were held to be weak evidence. As late as in the decision reported as (2009) 17 SCC 273 ***Mani v. State of***

T.N. recoveries of blood stained clothes and weapon of offence stained with blood were held to be weak recoveries. Following these judgments in ***Raj Kumar @ Raju v. State***, ILR (2010) Supp (1) Delhi 389, the recovery was held to be very weak type of evidence.

47. Adverting to the case in hand, the part of the disclosure statement of the accused that the clothes which he was wearing at the time when he committed the crime got stained with blood of the deceased and his getting the clothes recovered attracts Section 27 of the Evidence Act, limited to the extent that the accused got recovered blood stained clothes. However, independent evidence has to be led to prove that the said clothes were being worn by the accused at the time when the crime was committed and said fact cannot be proved through his disclosure statement. No such evidence has been led by the prosecution.

48. It is true that the tell-tale circumstances proved on the basis of the evidence on record gives rise to a suspicion against the appellants but suspicion howsoever strong is not enough to justify conviction of the appellants for murder. The trial court has, in our opinion, proceeded more on the basis that the appellants may have murdered

the deceased Sudhir @ Sonu. In doing so, the trial court overlooked the fact that there is a long distance between 'may have' and 'must have' which distance must be traversed by the prosecution by producing cogent and reliable evidence. No such evidence is unfortunately forthcoming in the instant case. The legal position on the subject is well settled.

49. In ***Ramreddy Rajesh Khanna Reddy v. State of A.P.***, (2006) 10 JCC 172, it was observed:

> *" 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 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."*

50. As far back as in the year 1957, Hon'ble Supreme Court in ***Sarwan Singh Rattan Singh v. State of Punjab***, AIR 1957 SC 637 observed that there may be an element of truth in the version of prosecution against accused and considering as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this

distance must be covered by legal, reliable and unimpeachable evidence before the accused can be convicted. It was further observed that degree of agony and frustration may be caused to the families of the victim by the fact that heinous crime may go unpunished but then the law does not permit the Courts to punish the accused on the basis of moral conviction or on suspicion alone. The burden of proof in criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubts on the basis of acceptable evidence and in case of doubt, accused is entitled to get benefit of the same.

51. Even if we take the most charitable liberal view in favour of the prosecution, all that we get is a suspicion against the appellants which cannot take the place of proof, therefore, appellants are entitled to get benefit of the same.

52. Accordingly, both the appeals are allowed.

53. The impugned judgment and order on sentence dated 2nd August, 1999 and 4th August, 1999 respectively convicting the appellants are set aside. The appellants are acquitted of the charges framed against them. Their bail bonds are discharged.

Copy of the judgment be sent to the concerned Jail Superintendent.

Trial Court record be returned forthwith.

(SUNITA GUPTA)
JUDGE

(KAILASH GAMBHIR)
JUDGE

APRIL 01, 2014
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