

Madhya Pradesh High Court

Sabir Khan vs State Of M.P. on 10 May, 2022

Author: Gurpal Singh Ahluwalia

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IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
&
HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA
ON THE 10th OF MAY, 2022

CRIMINAL APPEAL NO.788 OF 2011

Between: -

SABIR KHAN, S/O SHRI SATTAR
KHAN MUSALMAN, AGE - 28
YEARS, R/O MEDICAL KA
BAGEECHA SHRIRAM COLONY
GUNA, (MADHYA PRADESH)

.....APPELLANT

(BY SHRI A.K. JAIN - ADVOCATE)

AND

STATE OF MADHYA PRADESH
THROUGH POLICE STATION
GUNA DISTRICT GUNA (MADHYA
PRADESH)

.....RESPONDENT

(BY SHRI C.P. SINGH - ADVOCATE)

Reserved on : 05th of May, 2022
Delivered on : 10th of May, 2022

This appeal coming on for final hearing this day, Hon'ble Shri

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Justice G.S. Ahluwalia, passed the following:

JUDGMENT

1. This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the Judgment and Sentence dated 8-7-2011 passed by Special Judge/Additional Sessions Judge, Guna in S.T. No. 283/2010, by which the Appellant has been convicted under Sections 302, 201 of IPC and for offence under Section 302 of IPC, he has been sentenced to undergo Life imprisonment and a fine of

Rs. 5,000/- in default 1 year R.I. and for offence under Section 201 of IPC, he has been sentenced to undergo Rigorous Imprisonment of 7 years and fine of Rs. 5,000/-, in default 1 year R.I.

2. The prosecution story in short is that a gum insaan report no. 74/2011 was lodged. During enquiry, the statements of complainant Neelu Bano, Salma Bano, and the Appellant were recorded. It was found that Appellant was seen for the last time with the deceased. Thereafter, the Appellant made a confessional statement that on the dispute of non- payment of loan amount, he had given sleeping pills to the deceased Naushad and thereafter, strangled him, and his dead body has been buried in his own room. Chappal, Belt and Pant of the deceased have been thrown. Accordingly, FIR for offence under Section 302, 201 of IPC was registered against the Appellant.

3. The dead body of the deceased Naushad was dug out from the room of the Appellant. Articles belonging to the deceased were recovered at the instance of the Appellant. The Articles were got identified. One strip of Sleeping pills (Trika 0.5 mg) was seized from the house of the appellant. Appellant was arrested. Seized articles were sent to F.S.L.

Statements of witnesses were recorded and after completing investigation, police filed the charge sheet for offence under Section 302 of IPC.

4. The Trial Court by order dated 30-12-2010, framed charges under Sections 302, 201 of IPC.

5. The Appellant abjured his guilt and pleaded not guilty.

6. The prosecution examined Neelu Bano (P.W.1), Salma (P.W.2), Dr. Anil Mishra (P.W.3), Dinesh Raghuvanshi (P.W.4), Dr. D.S. Rana (P.W.5), Dhan Singh (P.W.6), Devendra Singh (P.W.7), D.K. Sharma (P.W.8), Mradul Sharma (P.W.9), and S.P. Sharma (P.W.10).

7. The Appellant did not examine any witness in his defence.

8. The Trial Court by the impugned judgment convicted and sentenced the Appellant for the above mentioned offences.

9. Challenging the judgment and sentence passed by the Court below, it is submitted by the Counsel for the Appellant that the case is based on circumstantial evidence, and the prosecution has failed to prove the chain of circumstances. The prosecution has failed to prove that the dead body of the deceased was recovered from the room of the house.

10. Per contra, the Counsel for the State has supported the prosecution case as well as the findings recorded by the Court below.

11. Heard the learned Counsel for the parties.

12. The present case is based on circumstantial evidence which can be summarized as under :

- (a) Last Seen Together
- (b) Recovery of Dead Body from the room of the Appellant
- (c) Recovery of articles belonging to the Deceased and their identification.
- (d) One strip of Sleeping pills (Trika 0.5 mg) was seized from the possession of Appellant and in Viscera Report, Lorazepam (Tranquilizer) was found.
- (e) Death was homicidal and cause of death was Strangulation.

13. Before considering the circumstances, this Court would like to consider as to whether the death of Naushad was homicidal in nature or not?

14. Dr. D.S. Rana (P.W.5) had conducted the post-mortem of dead body of Naushad and gave the following report :

Dead body of a young male lying supine over PM table wearing dotted white shirt, white baniyan, and brownish underwear and a tabeez with Kaliva like thread in neck (seized and sealed and handed over to PC) Head tilted slightly towards left side. Face and scalp is swollen up and congested and cyanoised. Both eyes are prominent. Eye balls are slightly soft, conjunctiva congested with retechial hemorrhage. Both pupils are dilated. Mouth opened. Tip of tongue (about 1 cm) is between teeth. Teeth are clinched. Blood present in both ears. Blood mixed froath coming from nostril. Right thigh is thinner than left thigh. Marveling (prominence of superficial vein with purplish red discoloration) seen and neck upper chest, shoulder and arms (Illegible), Both forearm are slightly flexed at elbows and fingers of both hand partially flexed. Right leg is partially flexed at knee. Left lower limb extended. Scrotum and penis are swollen. Multiple PM blisters and peeling of skin present over neck, both shoulder arm and forearm and elbows. Soil particles present over lower limbs and abdomen. Abdomen is distended with creamish discoloration of lower abdomen flanks. Rigormortis is in passing state in upper limbs and also present in lower limbs (Partially). PM staining fixed and present over back more on left side of back. External Injuries (I) Ligature mark: It is transverse and situated in mid part of neck below the thyroid cartilage. The base is redish and soft. It is 2 cm wide and 34 cm in length and present over neck anteriorly and B/L Anterio-lateral part of neck. It is not visualized posteriory. On dissection sub cutaneous tissue and muscles are ecchymosed under the neck. Ante-mortem ligature mark.

Cause of death is strangulation.

Mode of death is Asphyxia Duration since death is about 36 to 48 hours of PM Examination.

Viscera and cloths seized and sealed and handed over to P.C. Pradeep Sharma Kotwali Guna.

The Post-mortem report is Ex. P.15.

15. This witness was cross-examined. In cross-examination, he clarified that since on some parts of body marbling was found, therefore, it was opined that the duration since death is 36 to 48 hours. The face of the deceased was swollen but was not disfigured. The dead body was cold. Rigormortis was in passing stage. He clarified that in case of strangulation, it is not necessary that there would be ligature mark on the back side of neck also. The cause of death was strangulation and not throttling.

16. Thus, it is clear that the death of the deceased Naushad was homicidal in nature.

17. Now the next question for consideration is that whether the prosecution has proved the circumstances against the Appellant or not?

(a) Last Seen Together

18. Neelu Bano (P.W.1) is the Widow of the deceased Naushad. She has stated that the Appellant is known to her. For the last 3-4 months of the incident, he was visiting her house. Her husband (deceased) was in the business of selling bangles. At about 2 P.M., Appellant took the deceased with him. Thereafter, her husband came back along with goods. At about 2:30 P.M., again the Appellant took the deceased with him. At about 3 P.M., She called her husband from the mobile of Rambir and at that time, the deceased was in the house of the Appellant situated in Shriram Colony. She had a talk with her husband who had informed that the Appellant is not leaving him and is insisting that he should remain with him till 10 P.M. Thereafter, again at about 4:30 P.M., She called the deceased, but could not connect. The mobile number of deceased was 88717553061. At about 5 P.M., the Appellant came to her house and enquired about the whereabouts of the deceased. She informed that the deceased has not come back and also told him that he had taken the deceased with him. Thereafter, the Appellant went back. Again at 7 P.M., the Appellant came to her house and gave his mobile and asked her to talk to the deceased. She tried to contact her husband repeatedly but could not contact. At about 3 A.M. in the night, She again tried to contact the deceased but could not succeed. At about 8 A.M., She, Salma and Urmila went to the house of the Appellant. Sudama was also with them. The mother of the Appellant was preparing Chapatis and one brother of the Appellant was having meals, whereas the Appellant was sleeping. She enquired from the mother of the Appellant as to whether he is in house or not? But the mother of the Appellant refused, whereas the Appellant was sleeping in his house as Urmila had removed his bedsheet. Thereafter, She came back. The neighbors also came there. Thereafter, Appellant also came to her house. When this witness was about to go to the Police Station to lodge the report, the Appellant also said that he would also accompany them. While they were going to police station, the police also came in the colony, and took the Appellant with him. She also followed them. She lodged the gum insaan report. She also informed the police, that it was the Appellant who had taken the deceased with him. Thereafter, the Appellant disclosed to the police that he has killed Naushad. Police went to the room of the Appellant. Appellant informed that he has buried the dead body of Naushad. Appellant

himself dug out the dead body of Naushad from his room in the presence of this witness as well as Salma, Hariom, Dr. Anil Mishra and police personnel. Nothing else was found in the pit. Pant, cap, and belt of the deceased was recovered from Telghani. She identified the dead body of Naushad. The identification memo is Ex. P.1. She had also identified the articles i.e., Pant, Cap, Sleeper and Belt of her husband. Identification memo is Ex. P.2. Pant, Belt, Cap and Sleepers were identified in the Court and were marked as Articles A-1, A-2, A-3 and A-4. This witness was cross- examined.

19. In cross-examination, She stated that her husband was the resident of Firozabad. Bangles are manufactured in Firozabad. Her husband had a shop of bangles in Ashok Nagar. He had shifted to Guna in connection with his work. He had shifted about 1 year back. Yusuf is known to her. He had arranged for her meeting with the deceased. Sabir is a good friend of her husband and was on visiting terms. An amount of Rs.14,000/- is outstanding against the Appellant. She did not disclose the fact of Rs.14,000/- to the police, as the Appellant was already claiming that he had to take Rs.25,000/- from the deceased. She admitted that father, mother and brother of the Appellant also resides in the same house. On the date of incident, the Appellant had come to her house thrice. She immediately did not go to lodge gum insaan report, as She was alone and it was raining also. When the deceased had informed her that the Appellant is not leaving him, even then She did not go to the house of the Appellant. When She went to Police Station, the Appellant was being beaten by Police. Only after beating was given, Appellant had informed about the incident. Her husband was a well built person. She denied that at the request of this witness and Yusuf, the Appellant had given Rs.25,000/- to the deceased. She denied that the deceased was highly indebted therefore, he had shifted from Ashoknagar to Guna. She denied that She wanted to marry the Appellant and therefore, She got her husband killed with the help of businessmen. She denied that in the absence of Appellant, She got the dead body of the deceased buried in the house of Appellant.

20. Salma (P.W.2) has stated that Urmila, who is her neighbor, enquired about the house of Appellant. Thereafter, Urmila came along with Neelu. They went to the house of Appellant. Neelu had enquired about the whereabouts of the deceased from the Appellant. Thereafter, She came back. Police had come to the house of Appellant and had recovered the dead body of Naushad. In cross-examination, She claimed that the house of the Appellant is after 10-12 houses. She had seen from the roof of her house that the dead body was recovered from the room of the Appellant. Atleast 100 persons were present when the dead body was taken out.

21. No question was put to this witness with regard to her evidence that Neelu had enquired about the whereabouts of deceased.

22. The prosecution has produced Rojnamchasanha, Ex. P.23C, in which the gum insaan information is mentioned. Further, FIR has been marked as Ex. P.18. In the FIR, Ex. P.18, the gum insaan report is also reproduced. From the Gum insaan report, it is clear that Neelu Bano (P.W.1) had specifically alleged that the Appellant had taken the deceased with him. If the evidence of Neelu Bano (P.W.1) and Salma (P.W.2) is considered along with Gum Insaan report, then it is clear that prosecution has successfully proved that the deceased was taken away by the Appellant on 13-11-2010.

23. Even in his statement under Section 313 of Cr.P.C., the Appellant had accepted that the deceased had come to his house but claimed that thereafter he went to the house of Salma (P.W.2). However, no suggestion was given to Salma (P.W.2) that the deceased had gone to her house. Therefore, the Appellant has failed to prove that the deceased had left his house and went to the house of Salma.

24. The Supreme Court in the case of Shailendra Rajdev Pasvan v. State of Gujarat, reported in (2020) 14 SCC 750 has held as under :

15. Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person. In Bodhraj v. State of J&K, Rambraksh v. State of Chhattisgarh, Anjan Kumar Sarma v. State of Assam following principle of law, in this regard, has been enunciated: (Shailendra Rajdev Pasvan case, SCC OnLine Guj para 16) "16. ...The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

25. The Supreme Court in the case of Ashok v. State of Maharashtra, reported in (2015) 4 SCC 393 has held as under :

12. From the study of abovestated judgments and many others delivered by this Court over a period of years, the rule can be summarised as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt.

Here another judgment in Harivadan Babubhai Patel v. State of Gujarat, would be relevant. In this case, this Court found that the time-gap between the death of the deceased and the time when he was last seen with the accused may also be relevant.

26. The Supreme Court in the case of Mahavir Singh Vs. State of Haryana reported in (2014) 6 SCC 716 has held as under :

12. Undoubtedly, it is a settled legal proposition that the last seen theory comes into play only in a case where the time-gap between the point of time when the accused and the deceased were seen alive and when the deceased was found dead (sic is small). Since the gap is very small there may not be any possibility that any person other than the accused may be the author of the crime.....

27. The Supreme Court in the case of Jagroop Singh Vs. State of Punjab reported in (2012) 11 SCC 768 has held as under :

27. Quite apart from the above, what is argued is that there is a long gap between the last seen and recovery of the dead body of the deceased. As per the material on record, the informant searched for his son in the village in the late evening and next day in the morning he went to the fields and the dead body was found. The post-mortem report indicates that the death had occurred within 24 hours. Thus, the duration is not so long as to defeat or frustrate the version of the prosecution. Therefore, there can be no trace of doubt that the deceased was last seen in the company of the accused persons.

28. If the allegations of the present case are considered, then it is clear that the Appellant took the deceased with him at 2:30 P.M. and his dead body was recovered on the next day from the room of the Appellant. Post-mortem was done on 15-11-2010 at 9:15 A.M. and as per Dr. D.S. Rana (P.W. 5) the duration since death was about 36 to 48 hours of P.M. Examination. Even the Appellant has admitted that the deceased had come to his house and has failed to prove that thereafter he left his house. Thus, it is clear that the deceased died while he was with the Appellant. Under these circumstances, this Court is of the considered opinion, that the Prosecution has successfully established the circumstance of Last Seen Together.

(b) Recovery of Dead Body from the room of the Appellant

29. Neelu Bano (P.W.1) has stated that the dead body was dug out from the room of the Appellant.

30. Dr. Anil Mishra (P.W.3) has stated that the Appellant had given a memorandum and informed that he has killed the deceased Naushad and has buried his dead body in his room. Accordingly, the police personnel, this witness and other officers went to the spot. It was stated by the Appellant that he had given sleeping pills to the Deceased and thereafter, buried his dead body in his house. The dead body was dug out by the Appellant from his house. The Appellant was arrested vide arrest memo Ex. P.3. The memorandum is Ex. P.4. The Panchnama of breaking open the lock of the door is Ex. P.5. The recovery memo of dead body is Ex. P.6. The identification of the dead body is Ex. P.1. The Safina form is Ex. P.8 and the Lash Panchnama is Ex. P.7. A blue colour pant was recovered vide seizure memo Ex. P.10. A strip of pills (Trika 0.5 mg) was seized vide seizure memo Ex. P.11. On the disclosure made by the Appellant, Sleeper and belt of the deceased were seized vide seizure

memo Ex. P.12. The sleeping Pill (Trika 0.5 mg) is Article A-5. The pant is Article A-1, belt is Article A-2, Cap is Article A-3 and sleeper is Article A-4. This witness was cross-examined.

31. In cross-examination, he stated that on 14-11-2010, he had gone to the Police Station along with Appellant. He admitted that his house is opposite to the house of Appellant. He admitted that deceased is the friend of Appellant. He admitted that mother and brother of the Appellant also reside with him. He also admitted that he was tried for an offence under Section 302 of IPC. He denied that the Appellant had given evidence against him. All the writing work was done after the dead body was dug out. Belt of the deceased was recovered from an open place. All the articles were seized in his presence. He denied for want of knowledge about relationship of the Appellant with widow of Deceased. He denied that widow of deceased was inclined to marry Appellant.

32. Devendra Singh (P.W.7) is the investigating officer. He has stated that gum insaan report no.74/2010 was lodged by Neelu Bano (P.W.1) regarding missing of her husband. The statements of the witnesses were recorded in enquiry. The Appellant admitted that he has killed the deceased Naushad. On the basis of statement of Appellant as well as the statement of Neelu Bano, he registered the FIR in crime No.522/2010 for offence under Sections 302, 201 of IPC, Ex. P.18. Merg was also registered, Ex. P.19. Safina form is Ex. P.3. Lash Panchnama is Ex. P.7. The requisition for post-mortem is Ex. P.15. Spot map is Ex. P.20. He had recorded the statements of the witnesses. Since he had pain in his right hand therefore, entire writing work was done by Manu Tirki, Sub-Inspector and Panchnama is Ex. P.21. Appellant was arrested vide arrest memo Ex. P.3. His memorandum is Ex. P.4. The Panchnama of breaking open the lock of the door of the house of Appellant is Ex. P.4. The recovery and seizure of dead body is Ex. P.6. Pant of the deceased was seized vide seizure memo Ex. P.9. Jeans, Cap, was recovered from Telghani and seizure memo is Ex P.10. One strip of sleeping pills (Trika 0.5 mg) was seized from the house of Appellant vide seizure memo Ex. P.11. One pair of sleeper of the deceased and belt was seized vide seizure memo Ex.P.12. The departure and arrival Rojnamchasanhas are Ex. P.22C and its original copy is Ex. P.22. Gum Insaan report was lodged at serial No. 855 of Rojnamchasanha, Ex. P.23 and its photo copy is Ex. P.23C. The seized articles were sent to R.F.S.L. The FSL report is Ex. P.24. Pant is Article A-1, Belt is Article A-2, Cap is Article A-3, Sleeper is Article A-4. This witness was cross-examined.

33. In cross-examination, he admitted that Neelu Bano (P.W.1) is the resident of Ashoknagar, but denied that She was ousted by her father, as She had eloped with someone. It is true that earlier, deceased was selling bangles in Ashoknagar, but shifted to Guna as he had performed love marriage. It is true that the Appellant did not try to abscond. It is true that the deceased had remained with the Appellant upto 2:30 P.M. He did not get any evidence that Neelu Bano (P.W.1) was inclined to marry the Appellant. The Appellant had come to the Police Station, but stayed outside the Police Station and sent Neelu Bano inside the Police Station. He denied that he had beaten the Appellant. He denied that he had prepared false memorandum. He denied that the dead body was not recovered from the room of the Appellant. He admitted that when he went to the house of the Appellant for recovery of the dead body, then it was locked from outside. The Appellant had not given any information about the key. He admitted that the deceased was resident of Firozabad. He denied that deceased had left Ashoknagar as he was highly indebted. He denied that since, Neelu Bano (P.W.1) was interested in marrying the Appellant, therefore, She got the deceased killed with

the help of businessmen of Firozabad. He denied that the house of the Appellant was also searched on 13-11-2010. He denied that it was Neelu Bano (P.W.1) who got the dead body of Naushad buried in the house of the Appellant.

34. D.K. Sharma (P.W. 8) was posted as Sub-Inspector and was also member of the investigating team and has supported the evidence of Devendra Singh (P.W.7).

35. S.P. Sharma (P.W.10) is the Senior Scientist, Scene of Crime, F.S.L. Mobile Unit, Guna. He has also stated about the recovery of dead body from the room of the Appellant. In cross-examination, he has stated that he had gone to the place of crime along with Devendra Singh (P.W.7), D.K. Sharma (P.W.8). There were two rooms in the house of the Appellant. Both the rooms had different doors. No question was put to him with regard to ownership of the house.

36. It is submitted by the Counsel for the Appellant that the prosecution has not filed any documentary evidence to show that the dead body of the deceased was found buried in the house of the Appellant.

37. Considered the submissions made by the Counsel for the Appellant.

38. The Appellant has given suggestion to Neelu Bano (P.W.1) as well as to Devendra Singh (P.W.7) that it was Neelu Bano (P.W.1) who got the deceased killed and got his dead body buried in the house of the Appellant. Thus, by giving such suggestion, it is clear that the Appellant never disputed the fact that the dead body was recovered from the house of the Appellant.

39. Further more, Neelu Bano (P.W.1), Salma (P.W.2), Dr.Anil Mishra (P.W.3), Devendra Singh (P.W.7), D.K. Sharma (P.W.8) and S.P. Sharma (P.W.10) have specifically stated that the dead body of the deceased was recovered from the room of the Appellant. This evidence of the witnesses was not challenged by the Appellant. Even he has not taken any specific defence that the dead body was not recovered from his house. Thus, it is held that the prosecution has proved beyond reasonable doubt that the dead body was found buried in the house of the Appellant and it was dug out by the Appellant himself.

(c) Recovery of articles belonging to the Deceased and their identification.

40. Mridul Sharma (P.W.9) had conducted the Identification proceedings of the articles belonging to the deceased which were duly identified by Neelu Bano (P.W.1). The identification memo is Ex. P.2.

41. Dr. Anil Mishra (P.W.3) Devendra Singh (P.W.7) and D.K .Sharma (P.W.9) have proved the recovery of pant, cap, belt and sleeper of the deceased at the instance of the Appellant.

42. It is submitted that since, the articles were seized from an open place, therefore, it cannot be said that it was within exclusive knowledge of the Appellant.

43. The Supreme Court in the case of State of H.P. Vs. Jai Chand reported in (2013) 10 SCC (Cri) 773 has held as under :

26. The recovery of the bucket (Ext. P-8) has been proved as the same has been produced by Accused 1 (the respondent herein) himself before the police as recorded in the memo (Ext. PW-5/C) recorded at his instance in the presence of Prem Chand (PW 5) and Pyare Lal. As a matter of fact, the bucket was lying in the courtyard where it was identified by Accused 1 (the respondent herein) and thereafter, was taken into possession by the police. The reference in this behalf can be made to the statement of Prem Chand (PW 5) who stated that Accused 1 had shown the bucket to the police which was sealed in a parcel and thereafter taken into possession vide recovery memo (Ext. PW- 5/C). Not only this, he even identified the bucket (Ext. P-8) to be the same. The recovery of an incriminating article from a place which is open and accessible to others, alone cannot vitiate such recovery under Section 27 of the Evidence Act. Thus, the present is the case where there is no difficulty in holding that the bucket (Ext. P-8) is the same which was used by the respondent (herein) for drowning and strangulating his wife Vidhya Devi.

44. From memorandum, Ex. P.4, it is clear that the Appellant had made a specific disclosure about the place where the cloths and other belongings of the deceased were thrown. It is true that all the articles were lying in an open place, but that by itself is not sufficient to dislodge the circumstance of recovery of articles belonging to the deceased. It was the Appellant who was aware of the fact that where the cloths and other belongings of the deceased were thrown. Thereafter, it was the Appellant who picked up the articles and handed over to the police. It is not the case of the Appellant that every member of general public was aware of the fact that the articles lying in the open place, belong to the deceased. Further, those articles were identified by Neelu Bano (P.W.1). Thus, not only the Appellant pointed out the place where he had thrown the cloths and other articles of the deceased, but he also picked up the same and handed over to the police from the said place and those articles were also identified by Neelu Bano (P.W.1). Thus, it is clear that it was within exclusive knowledge of the Appellant that the Pant and cap of the deceased are lying at a particular place, whereas sleeper and belt of the deceased are lying at different place. Therefore, merely because the articles were recovered from an open place, would not give any dent to the circumstance of recovery of cloths and other articles of the deceased. Thus, this circumstance is also held to be proved beyond reasonable doubt.

(d) Sleeping pills (Trika 0.5 mg) were seized from the possession of Appellant and in Viscera Report, Lorazepam (Tranquilizer) was found.

45. According to Dr. Anil Mishra (P.W.3), Devendra Singh (P.W.7), D.K. Sharma (P.W.9) a strip of sleeping pills (Trika 0.5 mg) was also seized from the room of the Appellant vide seizure memo Ex. P. 11. As per seizure memo, Ex. P.11, the said strip was of 4 pills out of which 3 were missing, and the strip was having one sleeping pill (Trika 0.5 mg).

46. According to Neelu Bano (P.W.1) the deceased was well built. Therefore, in order to avoid any resistance from the deceased, the Appellant must have given tranquilizer to the deceased so that he can easily strangulate him. As per F.S.L. report of Viscera, Ex. P. 24, it was containing LORAZEPAM (TRANQUILIZER). The viscera report was received on 14-12-2010 whereas the memorandum Ex. P.4 was made on 14-11-2010 and the strip of sleeping pills (Trika 0.5 mg) was recovered on 14-11-2010. Thus, it is clear that before strangulating the deceased, he was tranquilized by the Appellant by giving sleeping pills (Trika 0.5 mg) and thereafter, he was strangled and buried the dead body in his own house.

(f) Death was homicidal and cause of death was Strangulation.

47. This Court has already given a finding that the death of the deceased Naushad was homicidal in nature.

48. Therefore, it is held that the prosecution has proved the circumstances of Last Seen Together, Recovery of Dead Body from the house of the Appellant, the Appellant had given sleeping pills (Trika 0.5 mg) to the deceased and a strip containing one pill was also recovered from the room of the Appellant and as per Viscera report, Lorazepam was found in the Viscera and the death of the deceased was homicidal in nature.

49. The Supreme Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra, reported in (1984) 4 SCC 116 has held as under :

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

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

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra 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.

50. The Supreme Court in the case of *Pudhu Raja v. State*, reported in (2012) 11 SCC 196 has held as under :

15. In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved, must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof. While dealing with a case of circumstantial evidence, the court must take utmost precaution whilst finding an accused guilty solely on the basis of the circumstances proved before it.

51. The Supreme Court in the case of *Ram Singh v. Sonia*, reported in (2007) 3 SCC 1 has held as under :

39. The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the court has to be watchful and avoid the danger of allowing the suspicion to make the place of legal proof, for sometimes unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions.

52. The Supreme Court in the case of *Inspector of Police v. John David*, reported in (2011) 5 SCC 509 has held as under :

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33. The principle for basing a conviction on the edifice of circumstantial evidence has also been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of

events from which the only irresistible conclusion that could be drawn is the guilt of the accused and that no other hypothesis against the guilt is possible.

34. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions.

35. This Court in *State of U.P. v. Ram Balak* had dealt with the whole law relating to circumstantial evidence in the following terms: (SCC pp. 555-57, para 11) "11. '9. It has been consistently laid down by this Court that where a case 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 other person. (See *Hukam Singh v. State of Rajasthan*, *Eradu v. State of Hyderabad*, *Earabhadrapa v. State of Karnataka*, *State of U.P. v. Sukhbasi*, *Balwinder Singh v. State of Punjab* and *Ashok Kumar Chatterjee v. State of M.P.*) 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. In *Bhagat Ram v. State of Punjab* it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and [bring home the offences] beyond any reasonable doubt.

10. We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.* wherein it has been observed thus: (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."

11. In *Padala Veera Reddy v. State of A.P.* it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: (SCC pp. 710-11, para 10) "(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 the 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."

* * *

16. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra*. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are: (SCC p. 185, para 153) (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" 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.' These aspects were highlighted in *State of Rajasthan v. Raja Ram*, at SCC pp. 187-90, paras 9-16 and *State of Haryana v. Jagbir Singh*."

53. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion, that the prosecution has proved all circumstances against the Appellant and the chain of circumstances is complete which lead to only one conclusion that it was the Appellant alone, who had killed the deceased Naushad.

54. Accordingly, his conviction under Sections 302, 201 of IPC recorded by the Trial Court is hereby Upheld.

55. So far as the question of sentence is concerned, the minimum sentence for offence under Section 302 of IPC is Life imprisonment, accordingly, the sentences awarded by the Trial Court for offence under Sections 302, 201 of IPC doesnot call for any interference.

56. Ex-consequenti, the Judgment and Sentence dated 8-7-2011 passed by Special Judge/Additional Sessions Judge, Guna in S.T. No. 283/2010 is hereby Affirmed.

57. The Appellant is in jail. He shall undergo the remaining Jail Sentence. Let a copy of this judgment be immediately provided to the Appellant, free of cost.

58. The record of the Trial Court be sent back along with copy of this judgment, for necessary information and compliance.

59. The Appeal fails and is hereby Dismissed.

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE

ARUN KUMAR MISHRA
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