



IN THE HIGH COURT OF HEMACHAL PRADESH, SHIMLA.

Cr. Appeal No. 327 of 2010

Reserved on: April 08, 2016.

Decided on: April 13, 2016.

State of Himachal Pradesh

Versus

Raj Kumar

.....Appellant.

.....Respondent.

Coram

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? ¹ Yes.

For the appellant: Mr. M.A.Khan, Addl. AG.

For the respondent: Ms. Archana Dutt, Advocate.

Justice Rajiv Sharma, J.

This appeal is instituted at the instance of the State against the judgment dated 31.12.2009, rendered by the learned Sessions Judge, Kangra at Dharamshala, H.P. in Sessions Case No. 14-P/VII-2009, whereby the respondent-accused (hereinafter referred to as accused), who was charged with and tried for offence punishable under Section 302 IPC has been acquitted.

2. The case of the prosecution, in a nut shell, is that on 26.12.2008 at 11:00 PM at village Khurd-Patt (Bhawarna), the accused committed the murder of Sunita Devi. The charge was framed against the accused under Section 302 IPC on 19.5.2009, to which he pleaded not guilty and claimed trial. The prosecution, in order to prove its case has examined as many as 11 witnesses. The statement of the accused was also recorded under Section 313 Cr.P.C. The accused has produced DW-1 Dr. Suresh Sankhyan in defence. The learned trial

¹ Whether the reporters of the local papers may be allowed to see the judgment?

Court acquitted the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. M.A.Khan, Addl. Advocate General, appearing on behalf of the State, has vehemently argued that the prosecution has proved the case against the accused under Section 302 IPC. On the other hand, Ms. Archana Dutt, Advocate has supported the judgment of the learned trial Court dated 31.12.2009.

5. We have heard learned counsel appearing for the State and gone through the judgment and records of the case carefully.

6. PW-1 Vikas alias Vicky testified that his brother was working in a private concern at Jalandhar for the last 7-8 years. He was also doing private job at Jalandhar and his mother was also residing with them. The accused is his Uncle. Accused was married and he has three kids from his first wife who was residing in her parents' house for the last 4-5 years with one kid. The other two children are residing with accused. The accused had kept another lady as his wife who was having one male child, aged about one and a half years. On 22.12.2008, he along with his mother came to his native village in order to see the bride. On 25.12.2008, he along with his mother and grandfather visited village Khaniyara to see the girl. They returned to their house on that very day. Thereafter, they again visited village Khaniyara since they could not see the girl on the earlier occasion. They returned from village Khaniyara at about 9:30 PM.

After taking meals, he and his mother and his grand parents were sitting in the room. They were talking with each other. At that time, the accused went to sleep alongwith his wife and son. Two other children of the accused were sleeping in the room of his grandmother. He called the accused and the accused also came to the room of his grandmother and started talking. After some time, his aunt left the room for sleeping. Thereafter, he and his mother left their house. At that time, the accused was sitting in the room of his grand parents. After about 10-15 minutes, he heard the sound of door of the house of the accused. He also heard the crying of children. His mother asked him to see as to what was happening. He went to the room of the accused first. He noticed the accused weeping and his wife Sunita was on his lap. He touched the body of his aunt and found her body cold. Thereafter, he called his grandfather. On his asking, firstly the accused started weeping and thereafter he told that his aunt had committed suicide by hanging herself with dupatta/scarf. Then he saw froth coming out from her mouth. They started giving massage on the hands and feet of the deceased but to no use. There was no pulse. In the meantime, his mother also came there. He told his mother that his aunt has died. Thereafter, her mother had gone to the house of Up Pradhan Sh. Ashwani Sood. Thereafter, he along with his mother went to the house of one person, namely, Kuku. He narrated the incident to Kuku, who advised them to inform the police. The police was informed.

The police came and recorded his statement vide Ext. PW-1/A. He was declared hostile and cross-examined by the learned Public Prosecutor. In his cross-examination, he denied the suggestion that the police has read over statement Ext. PW-1/A to him. However, the police asked him to sign the statement. He has studied upto 10th standard. He denied the suggestion that he told the police that when he entered the room of the accused, he saw his aunt lying on the bed with face downward and her hair were spread over and the accused was also present in the room. Volunteered that his aunt was lying on the lap of the accused and her hair were spread over. He denied the suggestion that he told the police that on his inquiry from the accused, the accused told him that he had killed his aunt by strangulating her and he was ready to face the consequences. He also admitted in his cross-examination by the learned defence counsel that the police had slapped him twice before recording his statement. He was threatened to sign the statement and he was not given time to read the same.

7. PW-2 Simro Devi also deposed that they heard the noise of weeping of the accused and his child. She sent his son to see and inquire as to what was happening there. At that time, she was standing on the door of her house and she heard his son calling for his grandfather who came down with a glass of water. She also came to the room of the accused on his son's calling her to that room. She saw Sunita lying on her bed on the floor and her face was downwards and

her hair were spreading. They asked the accused as to what had happened and as to why he was crying. He told that something had happened to Sunita (deceased) and also asked them to assist him to take his wife to the hospital. Then, her son rubbed the hands and feet of deceased. There was no pulse. The accused told them that the deceased has committed suicide by hanging. Thereafter she informed Up Pradhan Ashwani Sood and then she went to the house of Rakesh Walia who asked her to inform the police. She was also declared hostile and cross-examined by the learned Public Prosecutor. In her cross-examination, she denied the suggestion that her son on coming back told her that the accused had told him that he had killed his wife by strangulating her and that he was ready to face the consequences. She also denied the suggestion that she told Rakesh that the accused had killed his wife by strangulating her.

8. PW-3 Rakesh Kumar deposed that during the intervening night of 26/27.12.2008, he was present in his house. At about 1130 or 11:45 PM, during the night, Simro Devi and Vikas came to his house and informed that accused had killed his wife and asked him to accompany them to their house. He told them that his house is at some distance and they should call their neighbours. He also asked them to inform the police first. The police visited the spot and inquest papers vide Ext. PW-3/A and PW-3/B were prepared. The police

investigated the house of the accused. He denied the suggestion that Vikas informed the police that his aunt committed suicide by hanging. ◊

9. PW-4 Simro Devi wife of Thakur Chand deposed that she went to the house of accused. The dead body of the wife of the accused was lying on the floor.

10. PW-9 Dr. Munish Saroch has conducted the post mortem examination on the dead body on the basis of inquest papers Ext. PW-3/A and PW-3/B. The post mortem report is Ext. PW-9/A. According to him, the cause of death was asphyxia and final opinion was reserved. The probable time that elapsed between injury and death could not be ascertained and the probable time between death and post mortem was 15 hours. According to him, it could be a case of strangulation by way of throttling. In his cross-examination, he deposed that neck was not stretched. There was no bleeding from the mouth, ears and nose. He denied the suggestion that ligature mark was oblique, non continuous placed high up in the neck between the chin and the larynx. He admitted that the ligature mark was visible in the photograph Ext. PW-5/A-4. He admitted that there were no scratches, abrasions and bruises on the face, neck and other parts of the body. He also admitted that in case of hanging, there would be dribbling of saliva from the mouth.

11. PW-11 SHO Sohan Lal was the I.O. He recorded the statement of Vikas Kumar vide Ext. PW-1/A under Section 154 Cr.P.C.

He arranged for the photographer and got the photographs of the dead body of Sunita Devi and house of the accused vide Ext. PW-5/A-1 to PW-5/A-6. He inspected the spot and prepared spot map Ext. PW-11/B. The post mortem was got conducted. He also recorded the statement of Simro Devi. He sent the viscera of deceased to FSL, Junga.

12. PW-1 Vikas alias Vicky deposed that the accused started weeping and thereafter told him that his aunt had committed suicide by hanging herself with dupatta/scarf. He saw froth coming out from her mouth. He was declared hostile and cross-examined by the learned Public Prosecutor. In his cross-examination by the learned defence counsel, he deposed that the police had slapped him twice before recording his statement. He was threatened to sign the statement and was not given time to read the same. He denied the suggestion that he told the police that on his inquiry from the accused, the accused told him that he had killed his aunt by strangulating her and he was ready to face the consequences. Similarly, PW-2 Simro Devi has not supported the case of the prosecution. She was also declared hostile. According to her, the accused told them that Sunita Devi (deceased) had committed suicide by hanging. She also denied the suggestion in her cross-examination by the learned Public Prosecutor after she was declared hostile that her son on coming back told her that the accused

had told him that he had killed his wife by strangulating her and that he was ready to face the consequences.

13. The accused has also examined DW-1 Dr. Suresh Sankhyan. He deposed that it was a case of hanging. He had gone through the post mortem report Ext. PW-9/A. He was of the opinion that keeping in view the colour, the course of ligature marks, absence of nail marks around the neck, absence of petechial hemorrhages on face and eyes, sclera & conjunctiva of eyes, absence of struggle, it could be presumed to be a case of hanging. No poison was detected in the viscera as per the report Ext. PW-11/F. PW-9 Dr. Munish Saroch has also admitted in his cross-examination that there were no scratches, abrasions and bruises on the face, neck and other parts of the body.

14. The entire case is based upon circumstantial evidence. In the cases based on circumstantial evidence, the entire chain must be complete and should not be broken. The circumstances should be of conclusive nature. The circumstances must point exclusively towards the guilt of the accused. In the cases based upon circumstantial evidence, motive also plays an important role. The prosecution has not attributed any motive to the accused.

15. Their lordships of the Hon'ble Supreme Court in the case of ***Dandu Jaggaraju vrs. State of Andhra Pradesh***, reported in **(2011) 14 SCC 674**, have held that in a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be

proved by the prosecution. It is this circumstance which often forms the fulcrum of prosecution story. It has been held as follows: ◇

“9. It has to be noticed that the marriage between P.W. 1 and the deceased had been performed in the year 1996 and that it is the case of the prosecution that an earlier attempt to hurt the deceased had been made and a report to that effect had been lodged by the complainant. There is, however, no documentary evidence to that effect. We, therefore, find it somewhat strange that the family of the deceased had accepted the marriage for about six years more particularly, as even a child had been born to the couple. In this view of the matter, the motive is clearly suspect. In a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution and it is this circumstance which often forms the fulcrum of the prosecution story.”

16. Their lordships of the Hon'ble Supreme Court in the case of ***Sathya Narayan vrs. State rep. by Inspector of Police***, reported in **(2012) 12 SCC 627**, have held that in the case of circumstantial evidence, motive also assumes significance since absence of motive would put Court on its guard and cause it to scrutinize each piece of evidence closely in order to ensure that suspicion, omissions or conjectures do not take place of proof. It has been held as follows:

“42) In the case of circumstantial evidence, motive also assumes significance for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence closely in order to ensure that suspicion, omission or conjecture do not take the place of proof. In the case on hand, the prosecution has demonstrated that initially, the deceased entered the Ashram in order to assist the devotees and subsequently became one of the Trustees of the Trust and slowly developed grudge with the appellants. PWs 35 and 36, sister and brother of the deceased Leelavathi deposed that since then she became a Trustee, there was a dispute with regard to the Management of the said Trust.”

17. Their lordships of the Hon'ble Supreme Court in the case of ***Majenderan Langeswaran vrs. State (NCT of Delhi) and another***, reported in **(2013) 7 SCC 192**, have held that onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the Court and all the circumstances must lead to the conclusion that accused is the only one who has committed crime and none else. It has been held as follows:

“3. On 30th November, 1996, an altercation is stated to have taken place between the accused and the deceased L. Shivaraman. As the accused had sustained some cut injuries on his hands, he reported the matter to the officials. On 1st December, 1996 when the ship was on high seas, the appellant took off from his duty as helmsman on the ground of pain in his hands due to cut injuries and another helmsman Baria was asked to do the duty as replacement. As the accused and the deceased were staying in Cabin No. 25, the accused was temporarily shifted from that cabin to Cabin No. 23 due to the above incident of assault. At about 1510 hours, the accused allegedly approached IInd Officer Kalyan Singh (PW-6) with a blood- stained knife in his hand and his hands smearing in blood and is alleged to have confessed before him that he had killed L. Shivaraman. On being asked by Kalyan Singh (PW-6), the appellant handed over the blood-stained knife to him which he placed in a cloth piece without touching the same. Kalyan Singh (PW-6) then intimated the Captain and other officers. The body of L. Shivaraman was found lying in Cabin No. 23 in such a way that half of it was inside the cabin and half of it outside. The officials of Shipping Corporation of India were informed. On incident being reported, pursuant to an instruction from concerned quarter, the ship was diverted to Hongkong. On being so directed by the Captain of the ship (PW-5), Kalyan Singh (PW-6) got the body of the deceased cleaned up for being preserved in the fish room with the help of Manjeet Singh Bhupal (PW-4) and Chief Officer V.V. Muralidharan (PW-18) took photographs. The blood-stained knife was kept in the safe custody of PW-5. The accused was then apprehended, tied and disarmed before being shifted to the hospital on board. Since the ship was having Indian Flag, as per the International Treaty of which India was a signatory, the act of the accused was subject to Indian laws. Accordingly, a case bearing R.C. No. 10(S) of 1996 was registered

by the Central Bureau of Investigation (CBI) against the accused on 6th December, 1996.

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

17. In the case of *Hanumant Govind Nargundkar vs. State of M.P.*, AIR 1952 SC 343, this Court observed as under:

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

18. In the case of [Padala Veera Reddy vs. State of A.P.](#), 1989 Supp (2) SCC 706, this Court opined as under:

“10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within

all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See [Gambhir v. State of Maharashtra](#), (1982) 2 SCC 351)”

19. In the case of [C. Chenga Reddy & Ors. vs. State of A.P.](#), (1996) 10 SCC 193, this Court while considering a case of conviction based on the circumstantial evidence, held as under:

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

20. In the case of [Ramreddy Rajesh Khanna Reddy vs. State of A.P.](#), (2006) 10 SCC 172, this Court again considered the case of conviction based on circumstantial evidence and held as under:

“26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See [Anil Kumar Singh v. State of Bihar](#), (2003) 9 SCC 67 and [Reddy Sampath Kumar v. State of A.P.](#), (2005) 7 SCC 603).”

21. In the case of [Sattatiya vs. State of Maharashtra](#), (2008) 3 SCC 210, this Court held as under:

“10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all

the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.” This Court further observed in the aforesaid decision that:

“17. At this stage, we also deem it proper to observe that in exercise of power under [Article 136](#) of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court—[Bharat v. State of M.P.](#), (2003) 3 SCC 106. In the light of the above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime.”

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

23. It would be appropriate to consider some of the recent decisions of this Court in cases where conviction was based on the circumstantial evidence. In the case of [G. Parshwanath vs. State of Karnataka](#), (2010) 8 SCC 593, this Court elaborately dealt with the subject and 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.”

24. In the case of *Rajendra Pralhadrao Wasnik vs. State of Maharashtra*, (2012) 4 SCC 37, while dealing with the case based on circumstantial evidence, this Court observed as under:

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

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

25. Last but not least, in the case of [Brajendrasingh vs. State of M.P.](#), (2012) 4 SCC 289, this Court while reiterating the above principles further added that:

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

26. As discussed hereinabove, there is no dispute with regard to the legal proposition that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence as laid down by this Court. In such a case, all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else.”

18. Their lordships of the Hon’ble Supreme Court in the case of

Rishipal vrs. State of Uttarakhand, reported in **(2013) 12 SCC 551**,

have held that motive does not have a major role to play in cases based on eye witnesses account of incident but it assumes importance in cases that rest entirely on circumstantial evidence. Their lordships have further held that circumstances sought to be proved against accused be established beyond reasonable doubt, but also that such

circumstances form so complete a chain, as leaves no option for court, except to hold that accused is guilty of offences with which he is charged. It has been held as follows:

“15. The second aspect to which we must straightaway refer is the absence of any motive for the appellant to commit the alleged murder of Abdul Mabood. It is not the case of the prosecution that there existed any enmity between Abdul Mabood and the appellant nor is there any evidence to prove any such enmity. All that was suggested by learned counsel appearing for the State was that the appellant got rid of Abdul Mabood by killing him because he intended to take away the car which the complainant-Dr. Mohd. Alam had given to him. That argument has not impressed us. If the motive behind the alleged murder was to somehow take away the car, it was not necessary for the appellant to kill the deceased for the car could be taken away even without physically harming Abdul Mabood. It was not as though Abdul Mabood was driving the car and was in control thereof so that without removing him from the scene it was difficult for the appellant to succeed in his design. The prosecution case on the contrary is that the appellant had induced the complainant to part with the car and a sum of Rs.15,000/-. The appellant has been rightly convicted for that fraudulent act which conviction we have affirmed. Such being the position, the car was already in the possession and control of the appellant and all that he was required to do was to drop Abdul Mabood at any place en route to take away the car which he had ample opportunity to do during all the time the two were together while visiting different places. 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. [See *Sukhram v. State of Maharashtra* (2007) 7 SCC 502, *Sunil Clifford Daniel (Dr.) v. State of Punjab* (2012) 8 SCALE 670, *Pannayar v. State of Tamil Nadu by Inspector of Police* (2009) 9 SCC 152]. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside.

19. It is true that the tell-tale circumstances proved on the basis of the evidence on record give rise to a suspicion against the appellant but suspicion howsoever strong is not enough to justify conviction of the appellant for murder. The trial Court has, in our opinion, proceeded more on the basis that the appellant may have murdered the deceased-Abdul Mabood. In doing so the trial Court over looked 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 and does not

require any reiteration. The decisions of this Court have on numerous occasions laid down the requirements that must be satisfied in cases resting on circumstantial evidence. The essence of the said requirement is that not only should the circumstances sought to be proved against the accused be established beyond a reasonable doubt but also that such circumstances form so complete a chain as leaves no option for the Court except to hold that the accused is guilty of the offences with which he is charged. The disappearance of deceased-Abdul Mabood in the present case is not explainable as sought to be argued before us by the prosecution only on the hypothesis that the appellant killed him near some canal in a manner that is not known or that the appellant disposed of his body in a fashion about which the prosecution has no evidence except a wild guess that the body may have been dumped into a canal from which it was never recovered.”

19. The prosecution has failed to prove the case against the accused beyond reasonable doubt. Thus, there is no occasion for us to interfere with the well reasoned judgment of the learned trial Court dated 31.12.2009.

20. Accordingly, there is no merit in this appeal and the same is dismissed.

(Rajiv Sharma),
Judge.

April 13, 2016,
(karan)

(Sureshwar Thakur),
Judge.