

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Jail Appeal No. 4 of 2017

Gaurav @ GopalAppellant

Versus

State of UttarakhandRespondent

Present:-

Mr. M.K. Ray, *Amicus Curiae*.

Mr. J.S. Virk, Additional Advocate General assisted by

Mr. Sunil Upadhyaya, Brief Holder for the State.

Criminal Jail Appeal No. 31 of 2018

Vipin *alias* VeeruAppellant

Versus

State of UttarakhandRespondent

Present:-

Mr. S.R.S. Gill, *Amicus Curiae*.

Mr. J.S. Virk, Additional Advocate General assisted by

Mr. Sunil Upadhyaya, Brief Holder for the State.

JUDGMENT

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Per: Hon'ble Ravindra Maithani, J.

Since both these appeals arise from one and the same Sessions Trial, they are heard together and being decided by this common judgment.

2. Both these appeals are preferred against the judgment and order dated 17.09.2016/20.09.2016 passed in Sessions Trial No. 72 of 2015, State v. Vipin *alias* Veeru and another, by the court of Sessions Judge, Nainital, whereby the appellants Vipin *alias* Veeru

and Gaurav *alias* Gopal have been convicted under Sections 302 read with 34 IPC, 394 read with 34 IPC and 411 IPC and sentenced as under:-

- (i) Under Section 302 read with 34 IPC – Imprisonment for life and a fine of Rs. 20,000/- each. In default of payment of fine, to undergo additional imprisonment for a period of two years.
- (ii) Under Section 394 read with 34 IPC – Rigorous imprisonment for a period of ten years and a fine of Rs. 10,000/- each. In default of payment of fine, to undergo additional imprisonment for a period of one year.
- (iii) Under Section 411 IPC – Rigorous imprisonment for a period of 3 years and a fine of Rs. 10,000/- each. In default of payment of fine, to undergo additional imprisonment for a period of one year.

3. According to the FIR, PW 1 Geeta Devi, the informant, at the relevant time was working in a factory. Her husband was working in Chandigarh. Her children would go to school and during day time, her mother-in-law (“the deceased”) Lachma Devi used to stay in the house. On 22.05.2015, PW 1 Geeta Devi and her children left the house. At 01:00 in the afternoon, when the children of PW 1 Geeta Devi returned to the house, they found the deceased dead in her room. On hue and cry, the neighbours gathered at the spot and they informed PW 1 Geeta Devi and when she came, she found that the

deceased was strangled by the "Saari". The ear rings of the deceased were missing. The gold necklace of the informant PW 1 Geeta Devi, ATM Card, bank's passbook, gas book, Rs. 3,000/- and other articles were also missing. The FIR records that the appellants had visited the house of PW 1 Geeta Devi for a week prior to the date of incident in the absence of PW 1 Geeta Devi and were asking for the telephone number of her husband and in case the number is not given, they threatened that they would kidnap the children of PW 1 Geeta Devi. Suspicion was raised on the appellants. Based on it, a chik FIR, Ex. A-2 was lodged and Case Crime No. 152/2015 under Sections 302, 394 IPC was registered against the appellants. The extract of GD is Ex. A-3. The inquest of the deceased Lachma Devi was done on 22.05.2015 at 01:13 p.m. According to the inquest report, the cause of death was strangulation. The inquest report is Ex. A-5. The post-mortem of the dead body was conducted on 23.05.2015 at 11:30 a.m., which is Ex. A-4. The doctor opined that the cause of death is asphyxia as a result of smothering. The following injuries were found on the person of the deceased :-

- “(i) Bleeding clots present over both nostrils, mouth and right ear.
- (ii) Tongue clenched between teeth and lacerated type of tongue.
- (ii) Smothering marks present over lower and upper lip (inner side) whole face congested.

(iv) High ligature marks transversely present front of neck size 10cm x 2.5 cm.”

4. In fact, the police had reached at the spot after receiving the information that the dead body of Lachma Devi was found in her house. The GD extract is Ex. A-6. According to the prosecution, on 24.05.2015, the police was informed that the appellants were waiting at a bus stop. The police apprehended both of them and arrested them on 24.05.2015 at 04:35 a.m. and from each of them an ear ring was recovered. According to the prosecution, both the appellants confessed their guilt and told that they had snatched the ear rings of the deceased Lachma Devi. The recovered articles were sealed and a recovery memo, Ex. A-11 was prepared. Thereafter, at the instance of the appellants, according to the prosecution, a bag was recovered in a forest, which contained the bank passbook of PW 1 Geeta Devi, gas consumer card, ration card, etc. belonging to the informant. Recovery memo, Ex. A-21 was also prepared. The Investigating Officer prepared site plan of the place of incident where the deceased was killed, which is Ex. A-18. Call details were also taken into possession and after investigation, the Investigating Officer submitted the charge sheet, Ex. A-27, against the appellants under Sections 302, 394, 411 IPC.

5. On 17.10.2015, the charges were framed against the appellants under Sections 302 read with 34 IPC, 394 read with 34 IPC and 411 IPC, to which the appellants denied and claimed trial.

6. In order to prove its case, the prosecution got examined as many as 11 witnesses, namely, PW 1 Geeta Devi, PW 2 HC Manoj Kumar, PW 3 Dr. Rajeev Punetha, PW 4 Prem Singh, PW 5 Km. Anita,

PW 6 Prakash Rawat, PW 7 Const. Vinod Chandra, PW 8 HC Pushkar Bhatt, PW 9 Inspector Kailash Panwar, PW 10 Sub Inspector Pratap Singh Negi and PW 11 SI V.K. Mishra.

7. On behalf of the defence, two witnesses were examined, namely, DW 1 Smt. Kanta Devi and DW 2 Smt. Gurjeet Chaudhary. There are two court witnesses, namely, CW 1 Arun and CW 2 Vinod Kumar Singh.

8. After the prosecution evidence, the appellants were examined under Section 313 of the Code of Criminal Procedure, 1973 ("the Code"). According to them, they have been falsely implicated and the witnesses have given false statements.

9. After having heard the learned counsel for the parties, the court convicted the appellants and sentenced as stated hereinbefore. Aggrieved by it, the appellants have preferred these appeals from jail.

10. Heard learned counsel for the parties and perused the record.

11. Learned *Amicus Curiae* for the appellants submit that it is a no evidence case; merely based on some recovery, the appellants have been convicted, but, it is argued that the recovery has also not been established. It is argued that it is highly improbable that after killing, the appellants would keep the ear rings, each in their pocket and would let the police come and arrest them in the morning of 24.05.2015. It is argued that had the appellants killed the deceased, they would have run away. Moreover, it is argued that with regard to

the ATM Card and gold chain, according to the witnesses, the appellants had thrown them away, which it is argued is highly improbable that the appellants would throw the gold chain and keep the passbook, etc. at some place in the forest. It is also argued that even there had been no Test Identification Parade of the alleged recovered articles and mere producing the articles before PW 1 Geeta Devi does not establish that, in fact, those articles were stolen and looted. Hence, it is argued that the conviction of the appellants is bad and deserves to be set aside.

12. Learned *Amicus Curiae* for the appellants further submit that according to the prosecution, the appellants also looted the mobile phone of the deceased and used her SIM in their phone. But, it is argued that even the prosecution has not been able to establish that which SIM was used by the deceased Lachma Devi and there is no document to connect it.

13. Learned State Counsel submits that the ear rings and other articles were recovered from the possession or at the instance of the appellants on 24.05.2025. He would submit that when the post-mortem of the deceased was done, it had locking pins in her ear, and in the ear rings, which were subsequently recovered from the appellants on 24.05.2015 at 04:35 a.m., there had been no locking pins. He would submit that the witnesses have identified the ear rings in the court. Learned State Counsel submits that though there is less evidence to connect the appellants with the offence under Section 302 IPC, however, the recovery is proved.

14. Replying to it, learned *Amicus Curiae* for the appellants would submit that locking pins are general in nature; based on it, identity of an article cannot be established; there had been no test identification.

15. Before arguments are appreciated, it would be apt to examine as to what the witnesses have stated.

16. PW 1 Geeta Devi is the informant. She has stated that she has four children, who all are studying. Her husband works in Chandigarh and at the relevant time, she was working in a factory at Haldwani. According to PW 1 Geeta Devi, her children would go to school at 07:00 a.m. and she would also leave her house for her duty at 07:30 to 08:00 a.m. and her mother-in-law Smt. Lachma Devi stays in the house. On 22.05.2015, this witness and her children left the home and when her children came back, they found the deceased dead. She was also informed. She came back and found that the deceased was killed by placing a "Saari" knot on her neck. Her earrings were missing. According to this witness, the locker was broken, gold necklace of this witness, bank passbook, gas book, ration card, etc. were also missing. According to PW 1 Geeta Devi, in fact, the mobile number of the deceased bearing No.*****792 was also missing. PW 1 Geeta Devi states that the appellants are relatives. They had been visiting the house of this witness in her absence for a week prior to the date of incident and were asking for the mobile number of her husband, which she did not give. Thereafter, the appellants threatened her. This witness has proved the FIR, Ex. A-1.

17. In her further examination, this witness has proved the ear rings, material Exs. 6 and 7. She has also proved the passbook, gas book, ration cards, etc., which are material Exs. 10 to 21.

18. PW 2 HC Manoj Kumar has recorded the chik FIR and made entry in the GD. He has stated accordingly.

19. PW 3 Dr. Rajeev Punetha conducted the post-mortem of the deceased on 23.05.2025 at 11:30 a.m. He has noted the injuries on the person of the deceased, which are already referred to hereinabove. This witness has proved the post-mortem report, Ex. A-4.

20. PW 4 Prem Singh is the husband of PW 1 Geeta Devi. He is also not an eyewitness. According to him, between 15.05.2015 to 20.05.2015, her mother, the deceased, would telephonically call him and tell that she apprehends threat to her life from the appellant Vipin *alias* Veeru. According to this witness, the deceased would also tell that the appellants would visit her and would inquire about her jewellery, cash and other articles.

21. PW 5 Km. Anita is the daughter of PW 1 Geeta Devi. According to her, on 22.05.2015, she along with her brothers and sisters had gone to school and when they came back, they found that the articles were scattered in the house and the deceased was lying on the bed and her neck was tied with a "Saari". Thereafter, the neighbours came and they informed the mother of this witness and then the mother of this witness came. This witness has also stated that the appellants would visit their house and threaten her and her family members.

22. PW 6 Prakash Rawat had also reached the place of incident after the news broke. He is a witness of inquest, Ex. A-5.

23. PW 7 Const. Vinod Chandra has stated that on 22.05.2015, an information was reached at the chowki Peerumadara that a dead body was detected in a house, of which record was made in the GD entry, Ex. A-6.

24. PW 8 HC Pushkar Bhatt has stated that he prepared the inquest report, Ex. A-5 and other documents related to it. According to him, upon information having been received, the appellants were arrested on 24.05.2015 at 04:35 a.m. and from their possession two ear rings were recovered, which they confessed to have looted after killing the deceased Lachma Devi. This witness has proved the recovery memo, Ex. A-11.

25. PW 9 Inspector Kailash Panwar had reached at the spot after the information having been received. He proceeded with the investigation. This witness prepared a site plan, Ex. A-18. He has also stated that on 24.05.2015 at 04:35 a.m., the appellants were arrested and from their possession ear rings looted from the deceased Lachma Devi were recovered. According to him, the appellants confessed their guilt. He also states that the appellants were further interrogated on 24.05.2015 when they said that other looted articles have been placed by them, which they could get recovered and eight kilometres ahead of Ramnagar, the appellants got recovered certain articles, including the passbook, gas book, ration cards, etc., of which recovery memo, Ex. A-21 was prepared.

26. PW 10 SI Pratap Singh Negi had also reached at the place of incident on 22.05.2015. He is also a witness of recovery from the appellants that was made on 24.05.2015..

27. PW 11 SI V.K. Mishra is the Investigating Officer. He has stated about the steps that were taken during investigation. In para 7 of his statement, he tells that the deceased Lachma Devi had mobile No.*****792, whereas in para 9, he tells that the deceased Lachma Devi had mobile no.*****692. There is a discrepancy in it. This witness has proved the site plan of the recovery and other articles and finally submitted the charge sheet.

28. DW 1 Smt. Kanta Devi is the mother of the appellant Vipin *alias* Veeru. She has stated that the appellant Vipin is her son and the appellant Gaurav is her nephew. According to her, the appellant Gaurav was arrested by the police in her house at 07:00 in the evening.

29. Similarly, DW 2 Smt. Gurjeet Chaudhary has stated that the appellant Vipin was arrested from her house on 23.05.2015 at 06:30-07:00 p.m.

30. CW 1 Arun is the nodal officer of Aircell. He has stated about the documents pertaining to mobile number. He has stated particularly about the appellant Gaurav Rawat's cell number and its detail.

31. CW 2 Vinod Kumar Singh is the nodal officer of Idea Cellular Ltd. He has also stated about the mobile number, etc.

32. It is a case based on circumstantial evidence. In the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, the Hon'ble Supreme Court has discussed the concept of complete chain and factors that would contribute in proving the guilt of the accused in a case of circumstantial evidence. In paras 153 and 154, the Hon'ble Supreme Court has observed as follows:-

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

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrLJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

33. On behalf of the prosecution, it is being argued that for a week prior to the date of incident, the appellants had been visiting the house of PW 1 Geeta Devi in her absence and would ask the telephone number of her husband and in case it is not given, they would extend threats to the family members. Even if, it is taken as a gospel truth, is it a motive or preparation? Perhaps it may be a much weak kind of motive and even not a preparation.

34. For what purpose the appellants would ask the mobile number of the husband of PW 1 Geeta Devi and for what purpose they would kill the mother-in-law of PW 1 Geeta Devi? This has not been disclosed. Therefore, based on these assumptions that the appellants had been visiting the house of the deceased for a week prior to the date of commission of offence, it cannot be said that it is a chain that may connect the appellants with the commission of the murder of the deceased Lachma Devi.

35. What is being proposed on behalf of the prosecution is that on 24.05.2015, on information having been received, the appellants were arrested from a place and after their arrest, two ear rings, one from each, were recovered from the appellants and at that time the appellants confessed the guilt that they had looted the articles on 22.05.2015 when they killed the deceased Lachma Devi.

36. In addition to it, it is further case of the prosecution that at the instance of the appellants, from an open place in the forest, some documents pertaining to PW 1 Geeta Devi and her family members, for example, bank passbook, ration card, gas book, etc. were recovered.

37. Learned *Amicus Curiae* for the appellants submit that the recovery part is totally false and planted. They submit that it is not believable that the appellants would keep ear rings in their pocket two days after the incident, at a distance of 15 kms. from the place of incident. Moreover, they would submit that, according to the prosecution, the gold necklace of PW 1 Geeta Devi was also looted, which was not recovered and the explanation that has been offered by the prosecution witness, it is argued, further falsifies the prosecution case. Reference has been made to the statement of PW 10 Sub Inspector Pratap Singh Negi, who in para 29 of his statement tells that on being asked, the appellants did tell to them that they destroyed the ATM card and had thrown the gold necklace. Similarly, the statement of PW 9 Inspector Kailash Panwar made in para 30 has been referred to in this context, wherein he has also stated that the appellants had told to them that they had destroyed the ATM card and had also thrown away some jewellery.

38. In the case of *K. Ponnuswamy v. State of T.N.* by Inspector of Police, Directorate of Vigilance and Anti-Corruption, South Range, Trichy, 2001 (6) SCC 674, the Hon'ble Supreme Court discussed the aspect of "proved" and "not proved". The Hon'ble Supreme Court also took note of Section 114 of the Indian Evidence Act, 1872, which, *inter alia*, provides that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, etc. In para 27 of the judgment, in the case of *K. Ponnuswamy (supra)*, the Hon'ble Supreme Court observed as follows:-

“27.
.....
.....

There can be no dispute with the legal proposition. However, let us see what is meant by “proved”. Section 3 of the Evidence Act defines “proved” as follows:

“3. ‘Proved’.—A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

Further, Section 114 of the Evidence Act reads as follows:

“114. Court may presume existence of certain facts.—The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

Thus the fact is said to be proved when after considering the matters before it, the court believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. In coming to its belief the court may presume existence of any fact which it thinks likely to have happened having regard to the natural course of event, human conduct and public and private business, in relation to the facts of each case.”

39. Can it be believed that the appellants had thrown the gold necklace and had kept the passbook, gas book, ration card, etc.?

40. Admittedly, there has been no description of the ear rings that were allegedly looted from the deceased on 22.05.2015. After its alleged recovery, there was no test identification of those articles. For the first time, they were placed before the witnesses and they were identified. There is no other corroboration to the fact that, in fact, the allegedly recovered articles from the appellants were those, which were looted from the deceased Lachma Devi.

41. Under the facts and circumstances of the case, this Court is of the view that this fact is not proved that the jewellery, which was allegedly recovered from the appellants was, in fact, the jewellery looted from the deceased. There is no other evidence to connect the appellants with the commission of offence.

42. In view of the foregoing discussions, this Court is of the view that the prosecution has utterly failed to prove the case beyond reasonable doubt. The appellants deserve to be acquitted of the charges levelled against them. Accordingly, the impugned judgment and order passed by the court below convicting and sentencing the appellants deserves to be set aside and the appeals deserve to be allowed.

43. The criminal jail appeals are allowed.

44. The impugned judgment and order dated 17.09.2016/20.09.2016 is set aside. The appellants Gaurav *alias* Gopal and Vipin *alias* Veeru are acquitted of the charge under Sections 302 read with 34, 394 read with 34 and 411 IPC.

45. The appellants Gaurav *alias* Gopal and Vipin *alias* Veeru are in jail. Let they be set free forthwith, unless wanted in any other case.

46. The appellants shall furnish a personal bond and two reliable sureties, each of the like amount, by each one of them, to the satisfaction of the court concerned under Section 437 A of the Code within a period of month from their release.

47. Let a copy of this judgment along with the trial court record be sent to the court concerned.

48. Let a copy of this judgment be also forwarded to the concerned jail authority today itself, for onward compliance.

(Siddhartha Sah, J.)
16.06.2026

(Ravindra Maithani, J.)
16.06.2026

Avneet/