Sunil Clifford Daniel vs State Of Punjab on 14 September, 2012

Equivalent citations: 2012 AIR SCW 5180, 2012 (11) SCC 205, 2012 CRI. L. J. 4657, AIR 2013 SC (CRIMINAL) 193, 2012 (8) SCALE 670, (2012) 119 ALLINDCAS 141 (SC), 2012 (119) ALLINDCAS 141, 2013 (1) SCC (CRI) 438, 2013 CRILR(SC&MP) 202, (2013) 1 CHANDCRIC 114, (2013) 80 ALLCRIC 199, (2012) 4 ALL RENTCAS 472, (2012) 3 ALLCRIR 3155, 2013 CRILR(SC MAH GUJ) 202, (2012) 3 UC 2151, (2012) 53 OCR 714, (2012) 4 CURCRIR 85, (2012) 2 HINDULR 470, (2012) 3 DMC 295, (2012) 4 CRIMES 111, (2013) 1 CRILR(RAJ) 202, (2012) 8 SCALE 670

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Bench: B.S. Chauhan, Fakkir Mohamed Ibrahim Kalifulla

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2001 of 2010

Dr. Sunil Clifford Daniel …Appellant

Versus

State of Punjab
…Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and order dated 1.4.2009, passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 399-DB of 2000, by which it has affirmed the judgment and order dated 21.8.2000 passed by the Sessions Judge, Ludhiana in Sessions Case No. 28 of 1996, convicting the appellant under Sections 302 and 201 of

the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'), and awarded him a sentence to undergo RI for life and to pay a fine of Rs.2,000/- and in default of this, to undergo further RI for a period of 3 months. The appellant has further been sentenced to undergo RI for two years and to pay a fine of Rs.1,000/- and in default of this, to undergo further RI for a period of 2 months under Section 201 IPC. It has further been directed that the sentences would run concurrently.

2. The facts and circumstances giving rise to this appeal are as under:

> A. The appellant got married to Dr. Loyalla Shagoufta, deceased, on 29.10.1993. Both of them being qualified doctors, were working in the Christian Medical College (hereinafter referred to as 'CMC'), Hospital Ludhiana. The relationship between the husband and wife became strained and they have been living separately since June 1994.

B. As per the appellant, a petition for divorce by mutual consent was filed on 20.2.1996, under Section 28 of the Special Marriage Act, 1954 in the Court of the District Judge, Ludhiana, and both parties therein, appeared before the District Judge, Ludhiana on the first motion of the case. However, they were asked to wait for the second motion.

C. On 9.3.1996, the appellant handed over a set of blood stained clothes to Dr. B. Pawar, the Medical Superintendent, (PW.1), stating that when he came to his room that day, the same were found therein. Dr. B. Pawar (PW.1), informed the police about the said incident on the same date.

D. Dr. Loyalla Shagoufta, wife of the appellant, had informed her mother Smt. Victoria Rani (PW.2), who was living in Jagadhari, District Yamunanagar, by way of a telephone call on 6.3.1996, that she would visit her on 8.3.1996. However, she did not reach Jagadhari on 8.3.1996. Victoria Rani (PW.2), then came to Ludhiana on 10.3.1996, and found that her daughter was missing. Smt. Victoria Rani (PW.2) then lodged FIR No. 16 of 1996 on 10.3.1996, at 9.40 p.m. wherein being the complainant, she expressed her apprehension that the appellant herein, had abducted her daughter with the intention of killing her.

E. In the meanwhile, Dr. Namrata Saran, one of the residents of the hostel in which the deceased resided, also informed Dr. B. Pawar (PW.1), Medical Superintendent that the deceased had in fact been missing from the hostel since 9.3.1996. After an enquiry it came to light that the deceased was on leave from 9.3.1996 to 16.3.1996.

F. Piara Singh, ASI (PW.13), took up the investigation of the case and went to the appellant's hostel, however, his room No.2010, was found to be locked. A police party searched for the appellant, among several other places, in the house of Mr. Rana, one of his relatives, but he could not be traced/found anywhere. Dr. B. Pawar (PW.1) handed over the blood stained clothes given to him by the appellant, to the I.O.

G. On 11.3.1996, Vir Rajinder Pal (PW.14), SHO, Police Station, Ludhiana received a wireless message at 9.00 a.m., from the Police Chowki at Lalton Kalan, which is about 20 k.m. away from the

main city, informing him that the dead body of a female had been found, lying in the bushes, near the main road. The Investigating Officer took Victoria Rani (PW.2) with him, while accompanied by other police personnel, and recovered the body of the deceased from the said place.

H. Immediately after the recovery of the dead body, Vir Rajinder Pal (PW.14), visited the room of the appellant in the hostel and conducted a thorough search of the same, in the presence of Dr. B. Pawar (PW.1), Medical Superintendent.

I. The post-mortem of the deceased was conducted by a Medical Board consisting of three doctors, including Dr. U.S. Sooch (PW.11), on 11.3.1996. He opined that the deceased had died by way of strangulation and a corresponding ligature mark was found on her neck. She also had several grievous injuries to her head.

J. On 11.3.1996, the Investigating Officer came to know, in the course of interrogation that, the appellant had used the car of one Dr. Pauli (CW.2), and that a blood stained mat was lying in the dicky of the said car. The police hence took possession of the said car and mat, and sent the mat for preparation of an FSL report.

K. The appellant was arrested on 11.3.1996, and his room in the hostel was searched yet again, by one Ashok Kumar, Head Constable from the Forensic Department, who scraped some blood stained earth from the floor of the room. He also found a pair of blood stained white V-shaped, Hawaii chappals. Photographs of the said room were also taken. During interrogation, the appellant made a disclosure statement on 13.3.1996 to the effect that he would be able to help in the recovery of some relevant material from a place where he had hidden it. The appellant then led the police party to a place behind Old Jail, Ludhiana. From there, after removing some garbage etc., one blood stained gunny bag, a blood stained dumb-bell and one blood stained tie, were recovered.

L. The said recovered articles alongwith the clothes etc., found on the body of the deceased at the time of the post-mortem, and the blood stained clothes given by the appellant to Dr. B. Pawar (PW.1), which were subsequently handed over to the Investigating Officer, were sent for FSL report.

M. The FSL and serological report was then received, and it revealed that, all the articles recovered by the police during investigation, including the blood stained floor of his room, a part of the Hawaii chappals, and the recovered tie, contained human blood, with the sole exception of the mats found in the dicky of the car. The blood stains herein, had dis-integrated and it was therefore not possible to ascertain whether the same also contained human blood.

N. The police completed the investigation of the case and submitted a charge sheet against the appellant. The case was converted from one under Section 364, to one under Sections 302 and 201 IPC. The appellant was thus charged, but as he pleaded not guilty, he claimed trial. The prosecution examined 15 witnesses and two court witnesses were also examined under Section 311 of Criminal Procedure Code, 1973 (hereinafter called as `Cr.P.C.').

O. After the conclusion of the trial and appreciation of the evidence in full, the learned Sessions Judge, vide judgment and order dated 21.8.2000 found the appellant guilty on both counts and hence awarded him the aforementioned punishments.

P. Aggrieved, the appellant preferred Criminal Appeal No.399-DB of 2000 before the High Court, which was dismissed by the impugned judgment and order dated 1.4.2009.

Hence, this appeal.

3. Mrs. Kanchan Kaur Dhodi, learned counsel appearing for the appellant, submitted that the investigation was not conducted fairly. She stated that the appellant herein, had no motive whatsoever to commit the murder of his wife, and that they were going to separate very soon, as both parties had filed an application seeking divorce, by mutual consent. Further, no recovery was made from the room of the appellant in the hostel, rather the objects recovered had been planted. The appellant did not make any disclosure statement. Thus, even the recovery made from the place in close vicinity of the Old Jail, was not made in accordance with law, as there was no independent witness with respect to the said recoveries, and the recovery memo also, was never signed by the appellant. It is therefore, a case of circumstantial evidence. The courts below failed to appreciate that the chain of circumstances is not complete. Hence, the appeal deserves to be allowed.

4. Per contra, Shri Jayant K. Sud, AAG, appearing for the State of Punjab, has opposed the appeal, contending that the circumstances in the present case, point towards the guilt of the appellant without any exception. The deceased was surely killed in the room of the appellant. Recoveries were clearly made in view of the disclosure statement made by the appellant. Law does not require the recovery memo to be signed by the accused. He also stated that the appellant disappeared after the said incident and could only be arrested after a period of two days. It is the appellant alone who could explain the circumstances surrounding the purpose for which he had borrowed the car of Dr. Pauli (CW.2), and why he had wanted to hire a taxi to go to Jagadhari, as admittedly, his relations with his wife had been very strained. The appeal clearly lacks merit and is therefore liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the records.

6. Dr. U.S. Sooch (PW.11), was among the members of the Board of Doctors, who conducted the post-mortem of the body of the deceased on 11.3.1996, at 5.00 p.m. and found the following injuries on her person:

> “1. Well defined ligature mark 9” x 3.4” placed horizontally on the front of neck and both lateral sides of the neck, in the middle of neck and on the right side of the neck reaching below the lobule of the right ear. On exploration of the ligature the subcutaneous tissue was ecchymosed with laceration of underneath muscles and the hyoid bone was fractured. The larynx and trachea were congested.

2. An abrasion ½ " x ½" on the tip of the chin.

3. Abrasion ¾" x ½" and 1" below the angle, of left mandible.

4. Lacerated wound 2, ½" x 1" x bone deep obliquely placed on the right fronto parietal region and 1" inside the hair line near the midline.

5. Lacerated wound with badly crushed margins 2, ½" x ½" bone deep on the right occipital region.

6. Defused swelling 3" x 2" on the right occipital region across the midline.

Therefore, it is evident from the aforementioned injuries, as also from the medical report, that the deceased Loyalla Shagoufta was, without a doubt, a victim of homicide.

7. Dr. B. Pawar (PW.1), Medical Superintendent, deposed to the extent that the deceased was supposed to be on leave from 9.3.1996 to 16.3.1996, and that on the date of the said incident, she was not present in her hostel. Further, the appellant had reported to him, that when he came back to his room, he had found some blood stained clothes therein. The clothes were thereafter collected in a bag, and were kept in the office of Dr. B. Pawar (PW.1), and the possession of the same, was subsequently taken, by the police.

8. Smt. Victoria Rani (PW.2), mother of the deceased supported the case of the prosecution. She deposed that her daughter's marriage with the appellant had been quite strained, since no child could be born out of the wedlock and hence, they had started living separately. Her daughter had informed her by way of a telephone call, that she would visit Jagadhari on 7.3.1996, but she never came. Therefore, the complainant, Victoria Rani (PW.2), came to Ludhiana to search for her daughter, but she was found to be missing. Thus, she submitted a complaint to the police, on the basis of which, an FIR was lodged, wherein, she expressed her doubts with regard to the intention of the appellant, as in her opinion, he had been wanting to get rid of her daughter, and therefore, he could have kidnapped her for the purpose of killing her and fulfilling his purpose, once and for all.

9. Some of the witnesses, particularly Sarabjit Singh (PW.7), Security Guard of the hospital, Anil Kumar (PW.9), a Cook, working in the canteen of the Junior Doctor's Hostel and Joginder Singh (PW.12), did not support the case of the prosecution and turned hostile. However, the evidence of Kirpal Dev Singh (PW.8), is highly relevant. He deposed in court that he was providing services of a taxi and would park the same in the premises of CMC Hospital, Ludhiana. On 8.3.1996, the Canteen Contractor Joshi, had asked him to talk to Dr. Sunil of CMC, who wished to hire his taxi to go to Jagadhari. Accordingly, he went to speak to the appellant and became aware of the fact that the appellant wished to travel to Jagadhari on 9.3.1996. He then went to the appellant's hostel with his taxi on 9.3.1996, but was told by him that his wife had presently gone to collect her salary from Lalton Kalan and therefore, asked him to come again at 10.00 a.m. Thus, the said witness went to the doctor's place again, at 10.00 a.m. but he was yet again asked to come later, this time at 11.30 a.m. It was then, that the said witness told the doctor that he was no longer willing to go to

Jagadhari and he may engage another taxi, for this purpose.

10. Piara Singh, ASI (PW.13), deposed that he came to know about the said incident and henceforth went to CMC Hospital, Ludhiana, on 10.3.1996, after receiving the complaint made by Victoria Rani (PW.2). However, he found room No. 2010 of the said hostel occupied by the appellant to be locked from the outside. He then went alongwith a police party, to the room of the deceased but found that, this too had been locked from the outside. The witness then attempted to search for the appellant, and for this purpose, he also went to the house of Mr. Rana, who was a relative of the appellant and was living in close proximity to the hospital in Ludhiana itself, but the appellant could not be found either here. He continued his search at various other places, including hotels but was unable to find the accused.

On 11.3.1996, he stated that he had accompanied Vir Rajinder Pal (PW.14), and had therefore participated in the recovery of the dead body of deceased Dr. Loyalla Shagoufta from Lalton Kalan. He further deposed that on 13.3.1996, one gunny bag, one iron dumb bell and one tie were recovered in the presence of panch witness, Randhir Singh. A disclosure statement was also made by the appellant, in his presence to the effect that, these articles were related to the murder of the deceased and he had offered to help recover the same.

11. After recording the evidence led by the prosecution, the statement of the appellant was recorded under Section 313 Cr.P.C. The appellant denied all the allegations made by the prosecution and pleaded innocence. He stated that the blood stained clothes had been left in the balcony of his room, when he was not present therein and that he had produced the said clothes before Dr. B. Pawar (PW.1), Medical Superintendent, prior to the lodging of the FIR.

12. Vir Rajinder Pal (PW.14), supported the case of the prosecution in full, giving complete details from the very beginning of the incident, as he was posted as the SHO, Police Station, Ludhiana on 10.3.1996. He deposed regarding the recoveries made from the room of the accused, after the checking of the room and the preparation of seizure memos. The keys of the car parked in the premises of CMC hospital, one blood stained mat, duly attested by the panch witnesses, and a photocopy of the registration certificate of the said car, were taken into possession, as also the recovery of the blood stained clothes, which were handed over to him by Dr. B. Pawar (PW.1). He further deposed with regard to how the appellant was arrested as also about the items that were recovered from his body, the recovery of the blood stained floor from the appellant's room and the V-shaped pair of Hawaii chappals. The articles were all sealed and sent for FSL. He finally deposed regarding the manner in which the body was recovered, how the panchnama of recovery was prepared, and also about the manner in which, the post- mortem was conducted.

13. Dr. Pauli (CW.2), deposed that on 9.3.1996, he was contacted by the appellant at 6.00 p.m. and was told by him that his wife was missing, as a result of which, the appellant was in need of his car. Dr. Pauli (CW.2), therefore, gave his car to the appellant, bearing registration No. CH01-5653. The appellant returned after a duration of 1½ hours, parked the car outside the hostel, and handed over the key to the said witness. The possession of the said car was taken by the police on 11.3.1996, and the blood stained rubber mat was then recovered from the dicky of the car. The said mat was sealed

and taken away by the Investigating Officer (PW.14).

14. The trial court after appreciating the evidence on record came to the following conclusions:

> "However, various pieces of circumstantial evidence discussed above i.e. blood scratching lifted from the hostel room in occupation of accused production of various blood stained clothes by the accused before the Medical Superintendent of the Hospital and the recovery of blood stained neck tie and dumb-bell on the basis of a disclosure statement suffered by the accused and the blood stained car mat recovered in the case leave no manner of doubt that Dr. Mrs. Loyalla Shagoufta was first done to death in the hostel room no. 2010 in occupation of the accused by strangulating her as well as causing various injuries to her and thereafter the accused appeared to Dr. Pauli CW.2 to remove the traces of evidence appearing against him and was liable for the murder of Dr. Mrs. Loyalla Shagoufta deceased as well as for causing dis-appearance of the evidence.
>
> Dr. Loyalla Shagoufta in fact appeared to have been murdered in the hostel room in occupation of the accused. Various blood stains recovered from that room are a clear pointer to the fact that she was murdered in that room. None else could commit the crime in that room except with the knowledge and consent of the accused when the accused alone was in occupation of that room and was responsible for the crime committed in that room. Production of various blood stained clothes by the accused before the Medical Superintendent of the Hospital also goes to show that he was fully involved in the crime. On the fateful evening he also borrowed car from Dr. Pauli CW.2, which was used by him in removal of the dead body from the place of crime and the recovery of a blood stained mat from that car also goes to show that he in fact removed the dead body in that car. All this shows that he in fact murdered his wife Dr. Mrs. Loyalla Shagoufta and later on removed her dead body to cause dis-appearance as well as for causing dis-appearance of the evidence against him." So far as the motive is concerned, the court came to the conclusion that there was sufficient motive to kill the deceased, as the appellant wanted to now get rid of the deceased. More so, the appellant could not explain how the deceased happened to meet her death in his room. The court noted that though there were minor discrepancies in the story, the same were not fatal to the case of the prosecution and added that the case of the prosecution was fully supported by the FSL report and therefore, on such grounds, convicted the appellant.

15. The High Court concurred with the finding of the trial court observing as under:

> "Non-production of copy of Divorce Petition shows that the appellant-accused had the motive to eliminate the deceased. Admission of the appellant-accused before Dr. B. Pawar that blood stained clothes were found lying in his room and later on change of stand when examined under Section 313 Cr.P.C. that the blood stained clothes were lying in the balcony of the Junior Doctor's Hospital show that the prosecution

> story inspires confidence. Firstly, Dr. Shagoufta was murdered. Blood stained clothes were recovered from the room and by arranging car of Dr. Pauli dead body was thrown in the area of village Lalton Kalan. Dead body lying near the road is suggesting that the appellant-accused was in hurry to dispose of the dead body, that is why, after 1½ hours key of the car was returned to Dr. Pauli. Tie, dumb-bell and gunny bag were recovered as per disclosure statement and the recovered articles were found to be stained with blood. On 9.3.1996, Dr. Yogesh through Sarabjit Singh, Security Guard summoned the appellant-accused to Operation Theatre, but nothing on the file that the appellant-accused had attended the Operation Theatre to assist Dr. Yogesh. PW.7 Sarabjit Singh had gone to the room of the appellant-accused with the request that services of the appellant-accused are needed in the Operation Threatre. Sarabjit Singh is not related to the deceased. So, there was no idea to disbelieve him.
>
> As per post-mortem examination, death was due to strangulation as well as by causing various injuries. Neck tie recovered as per disclosure statement suffered by the appellant-accused was found to be stained with blood."

16. The instant case is a case of blind murder and is based entirely on circumstantial evidence, as there is no eye-witness to the said incident.

17. In Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622, it was held by this court that, the onus is on the prosecution to prove, that the chain is complete and that falsity or untenability of the defence set up by the accused, cannot be made the basis for ignoring any serious infirmity or lacuna in the case of the prosecution. The Court then proceeded to indicate the conditions which must be fully established before a conviction can be made on the basis of circumstantial evidence. These are:

> (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".

Thus, 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.

18. Admittedly, the appellant, after handing over the said blood stained clothes to Dr. B. Pawar (PW.1), on 9.3.1996, became untraceable as a result of which, he could only be arrested on 11.3.1996, at 6.00 p.m. Though this circumstance was not taken into consideration by the courts below, the learned standing counsel appearing for the State has relied upon it very strongly indeed before us.

19. This Court has considered this issue time and again and held that the mere act of absconding, on the part of the accused, alone does not necessarily lead to a final conclusion regarding the guilt of the accused, as even an innocent person may become panic stricken and try to evade arrest, when suspected wrongly of committing a grave crime; such is the instinct of self-preservation. (See: Matru v. State of U.P., AIR 1971 SC 1050; State thr. CBI v. Mahender Singh Dahiya, (2011) 3 SCC 109; and Sk. Yusuf v. State of West Bengal, AIR 2011 SC 2283).

In view of the above, we do not find any force in the submissions advanced by the learned counsel for the State.

20. In a case of circumstantial evidence, motive assumes great significance and importance, for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof.

21. In Subedar Tewari v. State of U.P. & Ors., AIR 1989 SC 733, this Court observed as under:

> "The evidence regarding existence of motive which operates in the mind of an assassin is very often than (sic) not within the reach of others. The motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to the evil thought in the mind of the assassin."

22. Similarly, in Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420, this court held as under:

> "In a case of circumstantial evidence, the evidence bearing on the guilt of the accused nevertheless becomes untrustworthy and unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime. Therefore, if the evidence on record suggest sufficient/necessary motive to commit a crime it may be conceived that the accused had committed it."

23. Thus, if the issue is examined in light of the aforesaid settled legal proposition, we may concur with the courts below on the said aspect.

24. In Jackaran Singh v. State of Punjab, AIR 1995 SC 2345, this Court held that:

> "The absence of the signatures or the thumb impression of an accused on the disclosure statement recorded under Section 27 of the Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement."

25. However, in State of Rajasthan v. Teja Ram, AIR 1999 SC 1776, this Court examined the said issue at length and considered the provisions of Section 162(1) Cr.P.C., Section 162(1) reads, a statement made by any person to a police officer in the course of an investigation done, if reduced to writing, be not signed by the person making it. Therefore, it is evident from the aforesaid provision, that there is a prohibition in peremptory terms and law requires that a statement made before the Investigating Officer should not be signed by the witness. The same was found to be necessary for the reason that, a witness will then be free to testify in court, unhampered by anything which the police may claim to have elicited from him. In the event that, a police officer, ignorant of the statutory requirement asks a witness to sign his statement, the same would not stand vitiated. At the most, the court will inform the witness, that he is not bound by the statement made before the police. However, the prohibition contained in Section 162(1) Cr.P.C. is not applicable to any statements made under Section 27 of the Indian Evidence Act, 1872 (hereinafter called 'Evidence Act'), as explained by the provision under Section 162(2) Cr.P.C. The Court concluded as under:

> "The resultant position is that the Investigating Officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by Section 27 of the Evidence Act. But if any signature has been obtained by an Investigating Officer, there is nothing wrong or illegal about it."

26. In Golakonda Venkateswara Rao v. State of Andhra Pradesh, AIR 2003 SC 2846, this court once again reconsidered the entire issue, and held that merely because the recovery memo was not signed by the accused, will not vitiate the recovery itself, as every case has to be decided on its own facts. In the event that the recoveries are made pursuant to the disclosure statement of the accused, then, despite the fact that the statement has not been signed by him, there is certainly some truth in what he said, for the reason that, the recovery of the material objects was made on the basis of his statement. The Court further explained this aspect by way of its earlier judgment in Jackaran Singh (supra) as, in this case, there was a dispute regarding the ownership of a revolver and the cartridge recovered therein. The prosecution was unable to lead any evidence to show that the crime weapon belonged to the said appellant and observations were made by this Court in the said context. The court held as under:

> "The fact that the recovery is in consequence of the information given is fortified and confirmed by the discovery of wearing apparel and skeletal remains of the deceased which leads to believe that the information and the statement cannot be false."

27. In view of the above, the instant case is squarely covered by the ratio of the aforesaid judgments, and the submission advanced in this regard is therefore, not acceptable.

28. Most of the articles recovered and sent for preparation of FSL and serological reports contained human blood. However, on the rubber mat recovered from the car of Dr. Pauli (CW.2) and one other item, there can be no positive report in relation to the same as the blood on such articles has dis-integrated. All other material objects, including the shirt of the accused, two T-shirts, two towels, a track suit, one pant, the brassier of the deceased, bangles of the deceased, the under-garments of the deceased, two tops, dumb bell, gunny bag, tie etc. were found to have dis-integrated.

29. A similar issue arose for consideration by this Court in Gura Singh v. State of Rajasthan, AIR 2001 SC 330, wherein the Court, relying upon earlier judgments of this Court, particularly in Prabhu Babaji Navie v. State of Bombay, AIR 1956 SC 51; Raghav Prapanna Tripathi v. State of U.P., AIR 1963 SC 74; and Teja Ram (supra) observed that a failure by the serologist to detect the origin of the blood due to dis-integration of the serum, does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it is possible, either because the stain is too insufficient, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood. However, in such a case, unless the doubt is of a reasonable dimension, which a judicially conscientious mind may entertain, with some objectivity, no benefit can be claimed by the accused, in this regard.

30. Learned counsel for the appellant has placed very heavy reliance on the judgment of this Court in Sattatiya @ Satish Rajanna Kartalla v. State of Maharashtra, AIR 2008 SC 1184, wherein it was held that in case the Forensic Science Laboratory Report/Serologist Report is unable to make out a case, that the blood found on the weapons/clothes recovered, is of the same blood group as that of the deceased, the same should be treated as a serious lacuna in the case of the prosecution.

The appellant cannot be allowed to take the benefit of such an observation in the said judgment, for the reason that in the aforementioned case, the recovery itself was doubted and, in addition thereto, the non- matching of blood groups was treated to be a lacunae and not an independent factor, deciding the case.

31. A similar view has been reiterated in a recent judgment of this court in Criminal Appeal No. 67 of 2008, Jagroop Singh v. State of Punjab, decided on 20.7.2012, wherein it was held that, once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group (s) loses significance.

32. In John Pandian v. State represented by Inspector of Police, Tamil Nadu, (2010) 14 SCC 129, this Court held:

> "....The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the forensic science laboratory (FSL) and it has been found stained with

> human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case." (Emphasis added)

33. In view of the above, the Court finds it impossible to accept the submission that, in the absence of the report regarding the origin of the blood, the accused cannot be convicted, upon an observation that it is only because of lapse of time that the classification of the blood cannot be determined. Therefore, no advantage can be conferred upon the accused, to enable him to claim any benefit, and the report of dis-integration of blood etc. cannot be termed as a missing link, on the basis of which, the chain of circumstances may be presumed to be broken.

34. When the appellant herein made a disclosure statement, a panchnama was prepared and recovery panchnamas were also made. The evidence on record revealed that the same were duly signed by two police officials, and one independent panch witness, namely, Randhir Singh Jat, who was admittedly, not examined. Therefore, a question arose regarding the effect of non-examination of the said panch witness, and also the sanctity of the evidence, in respect of recovery made only by two police officials.

35. The issue was considered at length by this Court in State, Govt. of NCT of Delhi v. Sunil & Anr., (2001) 1 SCC 652, wherein this Court held as under:

> "....But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust.....At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross- examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

36. One Randhir Singh Jat had been the Panch witness for the disclosure Panchnama and Recovery Panchnama. He has not been examined by the prosecution. No question was put to the Investigating Officer (PW.14), in his cross-examination, as to why the prosecution had withheld the said witness. The I.O. was the only competent person to answer the query. It is quite possible that the witness was not alive or traceable.

37. It is obligatory on the part of the accused while being examined under Section 313 Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence, to decide as to whether or not, the chain of circumstances is complete. The aforesaid judgment has been approved and followed in Musheer Khan v. State of Madhya Pradesh, (2010) 2 SCC 748. (See also:

> The Transport Commissioner, A.P., Hyderabad & Anr. v. S. Sardar Ali & Ors., AIR 1983 SC 1225).
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> ?38. This Court in State of Maharashtra v. Suresh, (2000) 1 SCC 471, held that, when the attention of the accused is drawn to such circumstances that inculpate him in relation to the commission of the crime, and he fails to offer an appropriate explanation or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. We may hasten to add that we have referred to the said decision, only to highlight the fact that the accused has not given any explanation whatsoever, as regards the incriminating circumstances put to him under Section 313 Cr.P.C.
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> 39. In view of the above, a conjoint reading of the complete evidence and material on record, suggests as under:
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> (i) The deceased Loyalla Shagoufta had informed her mother residing in Jagadhari, on 6.3.1996 that she would reach there on 7.3.1996.

However, she did not make it there. Therefore, Victoria Rani (PW.2), that is, mother of the deceased, came to Ludhiana to search for her daughter on 10.3.1996.

(ii) On 9.3.1996, the appellant handed over certain blood stained clothes to Dr. B. Pawar (PW.1), Medical Superintendent, stating that he had found the same, in his room, when he returned from the hospital. Dr. B. Pawar (PW.1), informed the police about the said incident, on the same date.

(iii) On 10.3.1996, Victoria Rani (PW.2), filed a complaint about the incident and an FIR was lodged. The Investigating Officer went to the room of the appellant, as well as of the deceased, in their respective hostels but the rooms were found to be locked from the outside. He then made an attempt to search for the appellant at the residence of his relative Mr. Rana, and also in other dhabas and hotels, but was unable to trace him, despite his efforts to do so.

(iv) On 11.3.1996, Dr. Namrata Saran, informed Dr. B. Pawar (PW.1) that the deceased had been missing from the hostel since 9.3.1996.

On the same day, Vir Rajinder Pal (PW.14), SHO, received a wireless message from the Police Chowki at Lalton Kalan, that the dead body of a female was lying in the bushes near an area of thoroughfare, closeby. He then rushed to the place alongwith Victoria Rani (PW.2), and recovered the dead body of the deceased and went on to prepare the panchanama etc. The room of the appellant was searched, but no recovery was made from the room.

(v) During the course of the investigation, Vir Rajinder Pal (PW.14), SHO, realised that the appellant had borrowed the car of Dr. Pauli (CW.2). Thus, the said car which was parked in the same compound, was taken into possession by the police, and a mat having blood stains on it, was recovered and sealed.

(vi) On 12.3.1996, experts were called and the room of the appellant was searched. Blood stains were found on the floor, which were scraped off and alongwith the same, a pair of V-shaped Hawaii chappals, also having blood stains on them, were recovered. The said articles were sealed.

(vii) The appellant was arrested on 11.3.1996, as he was produced by Joginder Singh (PW.12), and made a disclosure statement in the presence of police officials and also one Randhir Singh, the panch witness, and the panchnama was prepared and in it, he stated that, he would help in the recovery of articles, used while committing the murder of the deceased. On the basis of the said disclosure statement, he led the police party to the Old Ludhiana Jail and aided in making recoveries of a gunny bag, a dumb bell and one tie, as the same had been hidden below garbage and bushes. The same were duly recovered and panchnama was prepared. All the materials so recovered were then sent for FSL/serological report, and the report received stated that all the said articles contained human blood etc. except for a few, wherein the blood had dis-integrated and as a result of this, no report could be submitted.

(viii) On 11.3.1996, the dead body of the deceased, was sent for post- mortem examination by a Board of doctors including Dr. U.S. Sooch (PW.11), and various articles of the deceased, including her bangles etc. were taken into possession by the police.

(ix) In his statement, under Section 313 Cr.P.C., the appellant changed the version of his story, from the one given to Dr. B. Pawar (PW.1), stating that blood stained clothes handed over by him, were found in the balcony, interconnecting various rooms, as against his original statement wherein he had disclosed that he had found them in his room. He could not furnish any explanation with respect to how the blood stained clothes were found in his room.

(x) Kirpal Dev Singh (PW.8), a taxi driver, though did not identify the appellant in court, yet was not declared hostile by the prosecution, deposed that, on being asked by the canteen contractor Joshi, he had gone to meet the appellant on 9.3.1996, who told him that he wanted to go to Jagadhari. At that time, he was told to come later, as the wife of the appellant had purportedly gone to collect her salary from Lalton Kalan. Admittedly, the appellant and his wife, the deceased were living separately

and they did not have a cordial relationship. In such a fact-situation, the appellant would not have hired a taxi to go to Jagadhari. More so, if the deceased was living separately, it was not possible for the appellant to say that his wife had gone to Lalton Kalan, to collect her salary. The evidence of Dr. Pauli (CW.2), makes it clear that the appellant had in fact taken his car, used it for one and a half hours, and then brought the same back, and parked it in the hostel compound, after which he handed over the keys for the same to Dr. Pauli (CW.2).

(xi) The nature of the injuries mentioned in the post-mortem report makes it crystal clear that the deceased died of strangulation i.e. asphyxia, and she also had several injuries to her head, which could have been caused by a dumb bell, which was one of the materials recovered and found to have blood stains on it.

(xii) As the appellant had a strained relationship with his wife, he no doubt wanted to get rid of her. Although he has claimed that the petitions for divorce by mutual consent were pending before the court, he has never submitted any documents with respect to this before the court. Thus, inference may be drawn that the appellant did in fact wish to get rid of his wife.

(xiii) As the recoveries of the blood stained gunny bag, dumb bell, tie etc. were made on the basis of the disclosure statement of the appellant himself, the chain of circumstances is therefore, complete.

40. In view of the above, we do not find any reason to interfere with the concurrent findings recorded by the courts below. The appeal lacks merit and is therefore, dismissed accordingly.

.....J. (Dr. B.S. CHAUHAN)

.....J. (FAKKIR MOHAMED IBRAHIM KALIFULLA)

New Delhi,

September 14, 2012
