Sanatan Naskar & Anr vs State Of West Bengal on 8 July, 2010

Equivalent citations: AIR 2010 SUPREME COURT 3570, 2010 (8) SCC 249, 2010 AIR SCW 4445, (2011) 1 MAD LJ(CRI) 687, (2010) 2 CRILR(RAJ) 701, 2010 CALCRILR 3 431, 2010 (3) SCC (CRI) 814, (2010) 46 OCR 899, (2010) 2 UC 1289, (2010) 3 RECCRIR 629, (2010) 4 MH LJ (CRI) 308, (2010) 3 ALLCRIR 2839, 2010 ALLMR(CRI) 2961, (2010) 3 CRIMES 201, (2011) 1 CALLT 10, 2010 (6) SCALE 699, (2011) 72 ALLCRIC 488, 2010 CRILR(SC MAH GUJ) 701, (2010) 6 SCALE 699, (2010) 93 ALLINDCAS 907 (ORI), 2010 CRILR(SC&MP) 701, (2010) 3 BANKCAS 49, (2010) 2 ALD(CRL) 572, 2010 (71) ACC (SOC) 5 (ORI)

Author: Swatanter Kumar

Bench: B.S. Chauhan, Swatanter Kumar

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL 686 OF 2008

Sanatan Naskar & Anr. ...Appellants

Versus

State of West Bengal ...Respondent

JUDGMENT

Swatanter Kumar, J.

1. This case is a typical example, where conviction is entirely based upon circumstantial evidence. It is a settled principle of law that doctrine of circumstantial evidence is brought into aid where there are no witnesses to give eye version of the occurrence and it is for the prosecution to establish complete chain of circumstances and events leading to a definite conclusion that will point towards the involvement and guilt of the accused. The challenge in the present appeal is to the concurrent judgments of conviction passed by the learned Sessions Judge as well as the High Court, primarily, on the ground that the prosecution has been able to establish by leading cogent and reliable evidence and the chain of circumstances leading to the commission of the offence by the accused persons. The challenge, primarily, is that findings of the Court are erroneous in law and on the facts of the case. According to the accused-appellants, the prosecution has not been able to establish the

guilt beyond reasonable doubt. Secondly, it is submitted that the confessions, alleged to have been recorded by the police officer on the basis of which recoveries were effected, are contrary to law and, therefore, could not be the basis of the conviction of the appellants. For these reasons the appellants claim acquittal from charge.

2. To examine the merits of these contentions reference to the case of the prosecution and the facts, as they emerged from the record, would be necessary.

3. On 28th April, 1999 at Police Station Jadavpur, a case was registered under Section 302/34 of the Indian Penal Code (hereinafter referred to as `IPC') against unknown miscreants for causing death of one Smt. Phool Guha, wife of Dr. Ashim Guha, resident of 11/1 East Road within Jadavpur Police Station. This case was registered on the basis of the complaint made by Dr. Ashim Guha (Ext. P.1) which reads as under:

> "To The Officer-in-Charge Jadavpur, P.S. Dist.-south 24-Parganas Sir, This is to inform you, that on 28.4.99 at aroud 20.15 hrs. myself along with my son Debmalya and daughter-in-law Indira left for Gariahat for some personal work. My wife Smt. Phul Guha was in the house alone at 21.35 hrs. we all returned home and noticed a large gathering in front of our house. I found my wife lying dead inside the room of my daughter-in-law having her tongue prosuded and some marks of bruises could to detected on her body and blood was seen trickled out of the right angle of her mouth. It was also noticed that the assailants after (illegible) the murder of my wife, ransacked both the rooms and the household articles were scattered.
>
> It appeared that the assailants entered through the main door after obtaining the keys and the lock along with the key was found in the stair case.
>
> I, therefore, request you to kindly take necessary action and do the needful to (illegible) the miscreants.
>
> Yours faithfully, Sd/- Asim Kumar Guha"

As is evident from the above complaint that Dr. Ashim Guha, husband of the deceased, his son Debmalya and daughter-in-law Indira had left for Garihat on 28th April, 1999 at about 8.15 P.M. The deceased was all alone at home. When they returned home at about 9.30 P.M. they found a large gathering in front of the house. Upon entering the house, they found that Phool Guha was lying dead inside the room of her daughter-in-law with tongue protruded and with some marks of bruises on her body and blood trickling out of her mouth. It transpired that the assailants committed the murder of his wife and had ransacked both the rooms as the household articles were lying scattered. Mrinal Kanti Roy, the Investigating Officer, who was later examined as PW 13, commenced his investigation. He called for experts including dog squad. The photographs were taken. The dog squad was brought to the place of occurrence. After sniffing the place of occurrence, taking the round of the house and also sniffing the handkerchief lying on the face of the deceased, the dogs could not identify anyone present there. Thereafter inquest of the deceased was taken with

the help of the relatives. The body was taken to Mominpur Police Morgue by the constable where the post mortem of the deceased was conducted and the report is Ext. 8. From the place of occurrence certain articles were recovered and seizure memos were prepared whereafter both the rooms at the upper floor of the house were locked. The saliva and blood staines, where the body was found, were also seized by scraping floor and separate seizure memo was prepared and marked as Ext. 3. After some enquiry and investigation, the Investigating Officer arrested Sanatan Naskar, Appellant No. 1 on 8th July, 1999 from village Khasiara. He admitted his guilt in commission of the crime as well as identified the handkerchief recovered as his own. During investigation this appellant made a statement, which led to the recovery of wrist watches, which were allegedly looted from the house of the deceased. He also informed about the involvement of accused Mir Ismile, Appellant No. 2, who was arrested on 11th July, 1999 from Jugi Battala and he also, during investigation, made a statement leading to the recovery of two wrist watches as well as camera. The watches were recovered vide recovery memo Ext.6. The camera was recovered on the statement of the said accused from village Jhijrait for which the seizure memo Ext. 5 was also prepared. An attempt was made to recover jewellery from the shop, which was raided, but nothing could be recovered. The Investigating Officer then recorded the statements of number of witnesses, but in particular Jahar Chatterjee @ Kakuji (PW5), Indira Guha (PW6), Ali Anam (PW8) and Biplab Talukdar (PW9) respectively and after completion of the investigation, a charge sheet under Sections 302/411/34 IPC was filed before the Court of competent jurisdiction. The case was committed to the Court of Sessions by the learned Magistrate vide order dated 28th November, 1999. After trial and recording of the statements of the accused under Section 313 of the Criminal Procedure Code (hereinafter referred to as `Cr.P.C.') the learned Sessions Judge, by a detailed judgment, convicted both the accused and punished them as under:

> "Both the convicts are produced from J.C. They are given hearing with regard to question of sentence u/s 235(2) Cr.P.C. The convicts are informed that the sentence u/s 302/34 I.P.C. which has been established yesterday is life imprisonment or death penalty and the sentence for committing robbery u/s 392 I.P.C. is imprisonment for 10 years and the sentence for having possession of the looted property u/s 411 I.P.C. is 3 years. The convicts plead mercy. Heard Ld. PP and Ld. defence counsels in this regard.
>
> As the convicts are found guilty u/s 302/34 IPC the minimum punishment is imprisonment for life and this is not a case of rarest of the rare cases and as such the death penalty is not called for. Accordingly, both the convicts are sentenced to R.I. for Life. With regard to offence of robbery u/s 392 IPC the convicts are sentenced to R. Imprisonment for five years. With regard to offence u/s 411 IPC for possessing the looted properties the convicts are sentenced to R. Imprisonment for one year. All the sentences shall run concurrently."

4. Aggrieved from the judgment of guilt and order of sentence dated 6.12.2000, the appellants filed an appeal before the High Court. The High Court declined to interfere with the judgment of the learned trial Court. Even on the question of sentence the High Court found that adequate and just sentence had been awarded. In other words, the High Court even declined to interfere on the

question of quantum of sentence and dismissed the appeal vide order dated 7 th February, 2005 giving rise to the filing of the present appeal under Article 136 of the Constitution.

5. Since we have noticed, at the very opening of the judgment, that it is a typical case of circumstantial evidence and the entire challenge to the concurrent judgments is based on the facts that the chain of events has not been completely proved by the prosecution beyond reasonable doubt. Thus, the appellants are entitled to the benefit of doubt on the facts of the present case. Besides challenging the recoveries alleged to have been made from and/or at the instance of the accused, it was contended that the same are hit by the provisions of Section 27 of the Indian Evidence Act (hereinafter referred to as `the Act'). That being the sole and paramount circumstance, which had weighed with the Courts for convicting the appellants, the judgment under appeal is liable to be set aside. We are of the considered view that the chain of events and circumstances has been quite aptly stated by the trial Court in its judgment which are as follows:

> "Thus, therefore, it is now settled that the deceased died in between 8.15 P.M. to 9.00 PM. No other hypothesis in the alternative can be drawn.
>
> In this regard the chain of circumstances rest on the following clues:-
>
> 1) Presence of a handkerchief with a empty packet of capstan tobacco pouch beside the dead body;
>
> 2) Seizure of camera with cover and two ladies wrist watches from the hideout as laid by both accd. Separately; and
>
> 3) presence of accd. Persons near the PO house at the approximate time of murder;
>
> 4) medical evidence by the auto pay surgeon (PW-10) who suggested that the death of the deceased might be resulted from suffocation caused by this handkerchief (produced to him) if pressed against the mouth and nazal cavity with sufficient force and that the scuffling might due to force applied by more than one person;
>
> 5) result of chemical examination of the handkerchief.

Regarding time no. 1 the handkerchief was sent for chemical examination and the report is marked as exbt-14 with objection. It appears from the said report that traces of saliva was detected in the item-A (handkerchief) and item-B (floor scrapings) and floor swab in cotton wool. Blood was detected in item-A and B. Regarding the blood group of these items report of the serologist was called for. The report of serologist is marked exbt-14/9. It appears from the said report that the handkerchief cuttings floor scraping and blood soaked in filter paper were stained with human blood but the blood group of those human blood could not be determined as the sample was not sufficient for test for the first two items and item no. 4 viz. blood soaked filter paper was stained with B-group blood.

It however appears from the said report that the blood of the deceased belongs to group-B. So the report of F.S.L. and the serologist do not help the prosecution. So I shall have to rely on the other evidence on record."

The provisions of Section 27 of the Act clearly states that when any fact is deposed to as discovered in consequence of the information received from a person accused of any offence, in the custody of the police officer, so much of such, information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. In the present case the handkerchief, that was recovered from the place of occurrence, was subsequently owned by the accused. The fact recorded that he admitted his guilt was not admissible and could not be proved and has rightly been rejected by the learned trial Court in the impugned judgment. The wrist watches and the camera, which were recovered after the statement of the accused was recorded, while in custody, cannot be faulted with as those items have not only been recovered but duly identified by the owners during investigation as well as at the trial stage. PW13, the Investigating Officer, in his statement has referred to the recording of the statement of the accused after they were taken into custody and resultant recoveries of the articles. The contention is that the confessions extracted by the police officer are illegal and inadmissible, the alleged recoveries made in furtherance thereto and preparation of seizure memos are also unsustainable. In other words, these exhibits cannot be admitted or read in evidence. We may notice, on the contrary, that even the learned trial Court has specifically dealt with this objection. While referring to the cross examination of PW 13, efforts were made to involve the local witnesses, which he did not succeed and later when the seizure memos were prepared PW8 and PW9 were present. Ext. 18 clearly shows their presence and nothing contrary was suggested to them in their cross examination. Their presence during search and seizure of the house of the accused on two occasions has been completely established by the prosecution. No confessional statement made to the police, as alleged, has been relied upon by the Courts. It is only the objects recovered, in furtherance to the statement of the accused while in police custody like wrist watches, camera etc., that has been relied upon to by the Court to complete the chain of events relating to the crime in question. Thus, any of these acts are not hit by the provisions of Section 27 of the Act.

6. Usefully, reference can also be made to the judgments of this Court enunciating the principles under Section 27 of the Act. The Court in Anter Singh v. State of Rajasthan [(2004) 10 SCC 657] has held that the first condition necessary for bringing Section 27 into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that, at the time of the receipt of the information, the accused must be in police custody. The last but the most important condition is that, only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The Court further held as under:

> "The various requirements of the section can be summed up as follows:
>
> (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of

relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(1) The fact must have been discovered.

(1) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(1) The person giving the information must be accused of any offence.

(1) He must be in the custody of a police officer.

(1) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(1) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

Similar view was taken by this Court in Salim Akhtar v. State of U.P. [(2003) 5 SCC 499].

7. Now let us examine certain material facts which would help in understanding the chain of events in its correct perspective. PW 8 and PW 9 have specifically stated that on the date of occurrence they had seen the accused near the place of occurrence. PW5 and PW 6 have also stated that the accused were known to the family of the deceased. Most important statement pointing towards the normal practice of the house and likely involvement of the accused is pointed out in the statement of PW6, Smt. Indira, the daughter-in-law of the deceased. Besides referring to their departure from the house along with others and returning back to the house at about 9.30 P.M., she also stated that she found her mother-in-law, the deceased, lying on the floor and blood coming out of her mouth from the right side. The house was ransacked. She specifically stated that she would be able to identify the wrist watches and the camera and she gave the make of wrist watches and camera i.e. HMT and Titan wrist watches and Paintax camera. All the articles were identified by her as Ex.P.4 and P.5 respectively. About the accused knowing the family as well as how they used to open the entrance door she stated as under:

"These two accused persons in the lock up were occasionally engaged by us as hired labours for watering the flower tubs at roof top and cleaning the cars and for carrying drinking water. My mother in law also used their rickswa for visits. The accused are identified.

The upper story is used for our residence. The accused persons during their call rang an door bell. The inmate of the house used to come to balcony to identified the coler and in case he appears to be known man, the key in usually lowered by a string when

> the coler opens then door and on his entering recock the same and returned the key. We observed this system as a safety measure."

8. The forensic experts had taken the foot prints but the report was not definite as to whether the foot prints found at the site were the foot prints of the accused, however, this fact looses significance for the reason that the Investigating Officer had clearly stated in his evidence that at the place of occurrence, which was later on sealed by him, there were lot of foot prints as number of persons had gathered there. This small discrepancy cannot be of much advantage to the appellants inasmuch immaterial contradictions or variations are bound to arise in the investigation and trial of the case for various factors attributable to none. Reliance was placed by the Court on the judgment of State of Haryana v. Ram Singh [2002 CLJ 987] to say that in serious offences it is not fair to extend the rule relating to burden of proof to this extent that justice is the casualty. The appreciation of evidence by the Court can hardly be faulted with. At this stage, reference to the statements of accused under Section 313 Cr.P.C. would also be significant. Accused Sanatan Naskar in answer to Question No. 3 completely denied the knowledge of murder and death of Phool Guha despite the fact that he was known to the family and he was being engaged for different works at the same place. In relation to Question No.13 he answered that that this was not his handkerchief and in contradiction to the same we may refer to Question No. 16 and answer thereof:

> "Q. No. 16 Officer-in-charge stated that dog of Police, first sniffed the hanky and then showed you and he became sure that the handkerchief was yours. What do you say?
>
> A 16. There were losts of people alongwith the Police-Dog. They wiped the swet of my armpit and gave that to the `Dog'. It came and stated before me."

9. In relation to recovery of the items from him he was questioned by the Court to which he offered the following answer:

> "Q. 27 That witness had stated that on that day at about 1.30 clock in the afternoon he along with the officer-in-charge Anu Alam and you went to the house of Kartick Naskar at Gangaduara. Village boarding in a police jeep and you recovered two wrist watches, one H.M.T. and one Titan Wrist-watch all tied in a packet. Inspector prepared the seizure list in front of this witness and Anuu Alam and you took a copy of the by putting your thumb impression. What do you say?
>
> A. 27 He did not give me any copy and he also did not go with me. I only put my thumb impression in a plain paper at the office."

He further stated that he had been implicated and does not wish to offer any defence.

10. The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.PC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper

application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313 (4) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr.PC as it cannot be regarded as a substantive piece of evidence. In the case of Vijendrajit v. State of Bombay, [AIR 1953 SC 247], the Court held as under:

> "(3). .....As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under S.342 as supporting the prosecution case concerning the possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory part does not seem to be correct.

The statement under S.342 did not consist of two portions, part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was

found outside it.

This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown."

11. In the light of the above stated principles it was expected of the accused to provide some reasonable explanation in regard to various circumstances leading to the commission of the crime. He was known to the family along with other accused and by giving just a bare denial or lack of knowledge he cannot tilt the case in his favour. Rather their answers either support the case of the prosecution or reflect the element of falsehood in the statement recorded under Section 313 of Cr.PC. In both these circumstances the Court would be entitled to draw adverse inference against the accused.

12. As already noticed, this is a case of circumstantial evidence. We are not able to accept the contention that the appellants have been falsely implicated in the present case. The articles have been duly identified which were recovered from the possession of the accused at their instance. It is also not correct that the Court has relied upon the confessions made to the police. Only that much of the relevant fact has been taken into consideration which has resulted in the recovery of the articles i.e. wrist watches, camera etc. and the statement, to the extent they admitted their crime, has not been referred much less relied upon by the Courts. In the case of circumstantial evidence, law is now well settled.

13. There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eye witness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of accepted principles in that regard.

14. A Three Judge-Bench of this Court, in the case of Sharad v. State of Maharashtra [(1984) 4 SCC 116], held as under:

> "152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [AIR 1952 SC 343]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625] It may be useful to extract what Mahajan, J. has laid down in Hanumant case:

> "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."

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] 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."

15. So, the first and the foremost question that this Court has to examine in the present case is, whether the prosecution has been able to establish the chain of event and circumstances which certainly points out towards the involvement and guilt of the accused. Even, before we enter upon adjudicating this aspect of the case, it will be appropriate to narrow down the controversy keeping in view the admissions, if any, made by the appellants. The accused, after having known the entire case of the prosecution, is required to be examined under Section 313 of Cr.PC. All the material evidence has to be put to the accused and he has to be awarded the fair opportunity of answering the case of

the prosecution, as well as to explain his version to the Court without being subjected to any cross-examination. As already noticed, the answers given by the accused can be used against him in the trial in so far as they support the case of the prosecution.

16. In the cases of circumstantial evidence, this Court has even held accused guilty where the medical evidence did not support the case of the prosecution. In Anant Lagu v. State of Bombay [AIR 1960 SC 500], where the deceased died of poison, the Court held that there were various factors which militate against a successful isolation of the poison and its recognition. It further noticed that while the circumstances often speak with unerring certainty, the autopsy and the chemical analysis taken by them may be most misleading. No doubt, due weight must be given to the negative findings at such examination. But, bearing in mind the difficult task which the man of medicine performs and the limitations under which he works, his failure should not be taken as the end of the case, for on good and probative circumstances an irresistible inference of guilt can be drawn.

17. Similar view was taken by a Bench of this Court in the case of Dayanidhi Bisoi v. State of Orissa, [AIR 2003 SC 3915], where in a case of circumstantial evidence the Court even confirmed the death sentence as being rarest of rare case. The Court clearly held that it is not a circumstance or some of the circumstances which by itself, would assist the Court to base a conviction but all circumstances put forth against the accused are once established beyond reasonable doubt then conviction must follow and all the inordinate circumstances would be used for collaborating the case of the prosecution.

18. This Court in Sudama Pandey v. State of Bihar [(2002) 1 SCC 679], has stated the principle that circumstances shall form a chain which should point to the guilt of the accused. The evidence led by the prosecution should prove particular facts relevant for that purpose and such proven facts must be wholly consistent with the guilt of the accused. Though in that case the Court, as a matter of fact, found that the prosecution had failed to prove the chain of circumstances pointing towards the guilt of the accused and gave the benefit of doubt to the accused. This judgment cannot be of any assistance to the case of the appellants. In fact, the principle of law stated in that case has been completely satisfied in the present case. The prosecution, in the case in hand, has been able to establish and prove complete chain of circumstances and events, which if collectively examined, clearly points to the guilt of the accused.

15. We have already noticed that statement of PW 6 along with other prosecution witnesses is of definite significance. It is in evidence that the entrance door of the house was used to be locked. It was opened only when the visitor to the house press the call bell and such person was duly identifiable to the member of the family, watching from the 1st floor and that the keys were sent down with the help of a thread to enable the visitor to open the outside lock and then to enter the house. Keeping this routine practice adopted by the family of the deceased, it is clear that both the accused could enter the house only by the process indicated above or by break opening the lock of the entrance door. This is nobody's case before the Court that the lock or the door itself was broken by the miscreants who entered the house of the deceased. The only possible inference is that these accused were known to the family, as stated by the witnesses including PW 6 and they entered the

house in the manner afore stated and upon entering the house they ransacked the house and committed the murder of Phool Guha and fled away with stolen articles. The stolen articles were subsequently recovered from them and duly identified during investigation and trial. All these circumstances established the case of the prosecution beyond any reasonable doubt.

19. For the reasons afore stated the appeal is dismissed.

.....

J. [DR. B.S. CHAUHAN] .....J. [SWATANTER KUMAR] New Delhi July 8, 2010.