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RAM NIWAS

v.

STATE OF HARYANA

(Criminal Appeal No. 25 of 2012)

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AUGUST 11, 2022

[B. R. GAVAI AND PAMIDIGHANTAM SRI NARASIMHA, JJ.]

- Evidence – Circumstantial evidence – Completion of chain of evidence – Held: There has to be a chain of evidence so complete so as not to leave any reasonable ground for a 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 – Circumstances should be of a conclusive nature and tendency – The circumstances should exclude every possible hypothesis except the one to be proved – The accused ‘must be’ and not merely ‘may be’ guilty before a Court can convict – It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt – An accused cannot be convicted on the ground of suspicion, no matter how strong it is – An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

E *S. Arul Raja v. State of Tamil Nadu (2010) 8 SCC 233 : [2010] 9 SCR 356; Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 : [1985] 1 SCR 88 – relied on.*

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Case Law Reference

[2010] 9 SCR 356	relied on	Para 15
[1985] 1 SCR 88	relied on	Para 18

G CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 25 of 2012.

From the Judgment and Order dated 16.03.2009 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.47-DB of 2005.

Rishi Malhotra, Jaydip Patil, Advs. for the Appellant.

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Birendra Kumar Choudhary, AAG, Ms. Padma Choudhary, A
Dr. Monika Gusain, Advs. for the Respondent.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. This appeal challenges the judgment and order passed by the High Court of Punjab & Haryana at Chandigarh dated 16th March 2009, thereby dismissing the appeal filed by the accused/appellant-Ram Niwas, which was filed challenging the judgment and order dated 11th/12th January 2005 passed by the learned Sessions Judge, Sonepat, thereby convicting the appellant for the offences punishable under Section 302 and 201 of the Indian Penal Code, 1860 (“IPC” for short) and sentencing him to suffer rigorous imprisonment for life and to a fine of Rs.5,000/-, in default of payment of fine to further undergo rigorous imprisonment for two years under Section 302 IPC and to suffer imprisonment for three years and to a fine of Rs.2,000/- in default of payment of fine to further undergo rigorous imprisonment for one year. Both the sentences are directed to run concurrently. B

2. The prosecution case, in brief, is thus:

2.1 Deceased Dalip Singh, Bhim Singh (P.W.10), and the complainant-Deep Chand (P.W.9) are brothers. Pale, son of Bhim Singh (P.W.10), was married to Sunita, daughter of Chander Singh and the sister of the accused/appellant-Ram Niwas. After the death of Pale, his wife Sunita along with her minor son went to her parental house in village Rewli. Deceased Dalip Singh, Bhim Singh (P.W.10), and complainant-Deep Chand (P.W.9) wanted Sunita to be married to Rampal son of deceased Dalip Singh. As such, on 7th March 2003, all three of them had gone to the house of Chander Singh, father of the accused/appellant-Ram Niwas with the proposal of remarriage of Sunita with Rampal son of deceased Dalip Singh. E

2.2 It is the prosecution case that all three of them reached village Rewli and went to the house of Chander Singh, father of the accused/appellant-Ram Niwas at around 5.00 p.m. on 7th March 2003. At around 7.30 p.m., deceased Dalip Singh and accused/appellant-Ram Niwas started taking F

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- A liquor and at that time the proposal of marrying Sunita with Rampal was mentioned. On such mention being made, accused/appellant-Ram Niwas got angry and started abusing deceased Dalip Singh. However, complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10) intervened and pacified the accused/appellant-Ram Niwas. Thereafter, both of them after having their meals went to the first floor to sleep.
- B 2.3 On the morning of 8th March 2003, at around 6.30 a.m., when the complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10) went to the drawing room of Chander Singh, deceased Dalip Singh was not seen there. They asked about the whereabouts of deceased Dalip Singh from the accused/appellant-Ram Niwas, who told them that he had gone for answering the call of nature. Both of them waited for deceased Dalip Singh for about half an hour, but he did not return. Therefore, they again asked the accused/appellant-Ram Niwas about the whereabouts of deceased Dalip Singh, but they did not receive any satisfactory reply.
- C 2.4 It is further the prosecution case that after the complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10) came to the courtyard, they felt the smell of the burnt human body. The complainant-Deep Chand (P.W.9) again enquired from the accused/appellant-Ram Niwas about deceased Dalip Singh. Then the accused/appellant-Ram Niwas became nervous and replied that when deceased Dalip Singh had proposed to marry Sunita with his son Rampal then he had pressed the throat of deceased Dalip Singh and strangulated him to death. In order to destroy the evidence, the dead-body of the deceased Dalip Singh was burnt, but the same could not be burnt completely. The dead body of deceased Dalip Singh was concealed in Paraal (Paddy Fodder). Thereafter, the complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10) after removing the Paddy straw found the partially burnt dead body of deceased Dalip Singh wrapped in a piece of Plastic palli. Thereafter, the complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10) expressed their resentment towards the accused/appellant-Ram Niwas, and
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on hearing their resentment, the accused/appellant-Ram Niwas fled away from the spot. The complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10) went to their village Bhawar and returned back with other family members to village Rewli in the evening.

- 2.5 The complainant-Deep Chand (P.W.9) lodged a report with the Police station at 4.45 p.m. On the basis of the statement of the complainant-Deep Chand (P.W.9), a First Information Report (“FIR” for short) came to be registered at 5.00 p.m. A
- 2.6 Upon completion of the investigation, a charge-sheet came to be filed in the Court of learned Judicial Magistrate First Class, Sonepat. Since the case was exclusively triable by the Sessions Court, it came to be committed to the learned Sessions Judge, Sonepat. C
- 2.7 Charges came to be framed for the offences punishable under Sections 302 and 201 of the IPC. The accused/appellant-Ram Niwas pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned Sessions Judge, Sonepat passed orders of conviction and sentence, as aforesaid. Being aggrieved, the accused/appellant-Ram Niwas preferred an appeal before the High Court of Punjab and Haryana at Chandigarh. The same came to be dismissed. Hence the present appeal. D E

3. We have heard Mr. Rishi Malhotra, learned Advocate-on-Record appearing on behalf of the accused/appellant-Ram Niwas and Mr. Birendra Kumar Choudhary, learned Additional Advocate General appearing on behalf of the State of Haryana. F

4. Mr. Rishi Malhotra, learned counsel, submitted that from the perusal of the postmortem report, it is clear that it is not proved beyond reasonable doubt that the dead-body on which the postmortem was conducted was of deceased Dalip Singh. He submitted that Dr. Sanjeev Malhotra (P.W.5) has admitted that the face of the dead-body of which he had carried the postmortem was not recognizable. He therefore submitted that in the absence of the prosecution proving that the dead-body was of deceased Dalip Singh, the conviction was not sustainable. He further submitted that the evidence of the complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10), which is relied upon by the learned G

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- A Sessions Judge, Sonepat as well as the High Court, is totally unreliable. He submitted that the conduct of the said witnesses is totally unnatural. He submitted that from their evidence, it is seen that after they had seen the dead-body, they went all the way to their village Bhawar and returned back in the evening. He submitted that when the Police Station was at a distance of about one and a half kilometers from the place of the incident, their conduct in not going to the Police Station immediately and informing about the incident creates a serious doubt about the prosecution case. He therefore submits that the accused/appellant-Ram Niwas is entitled to be acquitted of all the charges charged with.
- B 5. Mr. Birendra Kumar Choudhary, learned AAG, on the contrary, submitted that both the courts below, upon correct appreciation of evidence, have concurrently found the accused/appellant-Ram Niwas to be guilty of the offences charged with. He submitted that the accused/appellant-Ram Niwas has made an extra-judicial confession before the complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10). He submitted that the said extra-judicial confession is corroborated by the recovery of ‘ash’ concealed in a plastic cover on the memorandum of the accused/appellant-Ram Niwas under Section 27 of the Indian Evidence Act, 1872 (“Evidence Act” for short). He therefore submitted that no case is made out for interference with the findings of fact, recorded by the learned Sessions Judge, Sonepat as well as by the High Court.
- C 6. To examine the correctness of the findings of the High Court, it will be apposite to scrutinize the evidence on record.
- D 7. Dr. Sanjeev Malhotra (P.W.5) has conducted postmortem examination of the dead-body of deceased. In his evidence, he stated that the dead-body was lying naked. It was showing deep burns all over the body. It was also emitting the smell of kerosene. The hair and scalp were missing. Eye balls, eye-lashes, and both ears were burnt out. Both lips and the nose were also burnt. He has categorically stated in his examination-in-chief that the face of the dead-body could not be recognized. He has also stated in his examination-in-chief that both feet were missing. Dr. Sanjeev Malhotra (P.W.5), in his cross-examination, has given a clear admission to the following effect:
 - E “It is correct that the body was not recognizable.”
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8. The complainant-Deep Chand (P.W.9), in his evidence, states that on 7th March 2003, he along with his two brothers, namely, Bhim Singh (P.W.10) and deceased Dalip Singh had gone to village Rewli. He states that all the three brothers had gone to village Rewli to ask for Sunita's hand in re-marriage for Rampal, son of his brother deceased Dalip Singh. After reaching the village Rewli at around 5.00 p.m., they met Chander Singh and his son accused/appellant-Ram Niwas. He further states that after some time, accused/appellant-Ram Niwas brought a bottle of liquor and he along with his father Chander Singh and his brother deceased Dalip Singh started taking liquor. He further states that upon the deceased Dalip Singh proposing the re-marriage of Sunita with his son Rampal, there was a minor altercation between them. He states that he and Bhim Singh (P.W.10) persuaded both sides to not fight. After taking their meals, the accused/appellant-Ram Niwas told him and Bhim Singh (P.W.10) to go to the first floor to sleep, since the accused/appellant-Ram Niwas and deceased Dalip Singh wanted to have some talk. Thereafter, they went to sleep on the first floor.

9. Complainant-Deep Chand (P.W.9) further states that in the morning when they had gone to the drawing room of the accused/appellant-Ram Niwas at around 6.30 a.m. and asked about their brother the deceased Dalip Singh, the accused/appellant-Ram Niwas told them that deceased Dalip Singh had gone to ease himself. After waiting for about half an hour, when deceased Dalip Singh did not return, they again enquired from the accused/appellant-Ram Niwas about the deceased Dalip Singh. Thereafter, accused/appellant-Ram Niwas told them that he had murdered deceased Dalip Singh. On being enquired about the dead-body of deceased Dalip Singh, accused/appellant-Ram Niwas told them that he had kept the dead-body concealed in the paraal (paddy fodder). They also felt the foul smell of burning. They went there and saw the dead-body of deceased Dalip Singh, wrapped in a plastic palli and lying in a heap of paraal and also in a burnt condition. Thereafter, he and Bhim Singh (P.W.10) ran away from there since they had an apprehension that accused/appellant-Ram Niwas might kill them also. He states that they, thereafter, straightway went to their village Bhawar and on the same day after taking 4-5 persons from the village, he came to Murthal Adda and at the turning of Engineering College, they met the Police and informed about the incident.

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- A 10. In his cross-examination, complainant-Deep Chand (P.W.9) admitted that parents of Sunita had come to his village Bhawar at the time of Chhamahi and Barsi ceremonies of Pale. He has further admitted that they did not talk with the parents of Sunita regarding the re-marriage of Sunita with Rampal on those occasions. He has further admitted that according to customs in their society, the remarriage of a widow or Karewa is to be solemnized on the occasion of Chhamahi and Barsi. It will be relevant to refer to the following admissions in the evidence of the complainant-Deep Chand (P.W.9):

C “After seeing the dead body we not raise any alarm and none came at the spot in our presence. Sunita was also ‘present in village Revli on that day. We did not tell even to Sunita or any body else in the village. We went to our village Bhawar through a jeep and bus. Police station Murthal is situated at a distance of one and half kilometer from village Revli. We did not inform the police of P.S. Murthal. We reached in our village at about 9:00 A.M. We came back in a jeep. Subhash, Ganga, Prem, Raju, Sher Singh, Pappu etc. had accompanied us to village Revli. We did not inform any police station which falls on the way back to village Revli. However, police station Baroda, Gohana, Mohana, sonepat and Murthal falls on the way.”

E 11. It could thus clearly be seen from the evidence of the complainant-Deep Chand (P.W.9) that after seeing the dead-body of deceased Dalip Singh, they did not raise any alarm. He has clearly admitted in his deposition that there are residential houses on one side of the house of accused/appellant-Ram Niwas. He further admitted that they reached their village Bhawar at around 9.00 a.m. They waited till F 2.30/3.00 p.m. to inform the Police. He has further admitted that between village Rewli and his village Bhawar, Police Station Baroda, Gohana, Mohana, Sonepat, and Murthal are on the way. They did not give intimation to any of these Police Stations either on their way to village Bhawar or while returning to Murthal.

G 12. The evidence of Bhim Singh (P.W.10) is to the similar effect.

H 13. Apart from the ocular testimony of the complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10), the only incriminating circumstance, on which the prosecution relies is the recovery of ‘ash’ and ‘plastic can’ on the memorandum of the accused/appellant-Ram Niwas under Section 27 of the Evidence Act.

14. It could clearly be seen that even according to the complainant-Deep Chand (P.W.9) and Bhim Singh (P.W.10), after they saw the dead-body of the deceased Dalip Singh in paraal (paddy fodder), they did not inform anyone in the village. No doubt that how a person responds to a situation is differ from a person to person. However, the conduct of the said witnesses in not informing anybody in the village Rewli and thereafter going to their village Bhawar in the morning, returning back in the afternoon and not informing five Police Stations, which were in between village Bhawar and village Rewli cast a serious doubt with regard to the truthfulness of their version. It is further difficult to believe the testimony of these witnesses that in the night, the deceased Dalip Singh was done to death, set on fire in a paraal (paddy fodder) and they did not come to know about the same till the accused/appellant-Ram Niwas told them about the same next morning. In the evidence of these witnesses, it has clearly come out that there are houses surrounding the house of the accused/appellant-Ram Niwas. The prosecution version appears improbable that such an incident took place in an area surrounded by houses. The prosecution has also not examined any independent witness residing nearby so as to lend credence to the prosecution's version.

15. The prosecution relies on the extra-judicial confession made by the accused/appellant-Ram Niwas to these witnesses. This Court in the case of *S. Arul Raja vs. State of Tamil Nadu*¹, after considering the earlier judgments of this Court, has observed thus:

“**48.** The concept of an extra-judicial confession is primarily a judicial creation, and must be used with restraint. Such a confession must be used only in limited circumstances, and should also be corroborated by way of abundant caution. This Court in *Ram Singh v. Sonia* [(2007) 3 SCC 1 : (2007) 2 SCC (Cri) 1] has held that an extra-judicial confession while in police custody cannot be allowed. Moreover, when there is a case hanging on an extra-judicial confession, corroborated only by circumstantial evidence, then the courts must treat the same with utmost caution. This principle has been affirmed by this Court in *Ediga Anamma v. State of A.P.* [(1974) 4 SCC 443 : 1974 SCC (Cri) 479] and *State of Maharashtra v. Kondiba Tukaram Shirke* [(1976) 3 SCC 775 : 1976 SCC (Cri) 514]. It is significant to observe that A-1

¹ (2010) 8 SCC 233

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A has subsequently sought to retract this statement upon his arrival in Tamil Nadu.”

16. We therefore find that it will not be safe to base conviction solely on the basis of the alleged extra-judicial confession made by the appellant to these witnesses.

B 17. The only other circumstance on which the prosecution relies is the seizure of ‘ash’ kept in the plastic bag on the memorandum of the accused/appellant-Ram Niwas under Section 27 of the Evidence Act. Satish Kumar (P.W.11), the Investigating Officer (I.O.), in his deposition has clearly admitted that the disclosure statement made by the accused/appellant-Ram Niwas was made in the lock-up of the police station. He has further admitted that though independent witnesses were available, inasmuch as the Police Station is in the heart of the city, he had not called any independent witness as ‘Panch’ of the said memorandum. As such, the reliance on the said seizure also is of no help to the prosecution case. It is further to be noted that Dr. Sanjeev Malhotra (P.W.5), in his evidence, has admitted that it was difficult to recognize the face of the dead-body. From the postmortem, it is also not established that the death was homicidal.

C 18. The prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra*², wherein this Court held thus:

D “**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 : 1952 SCR 1091 : 1953 Cri LJ 129]. 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: 1970 SCC (Cri) 55] and *Ramgopal v. State of Maharashtra* [(1972) 4 SCC 625: AIR 1972 SC 656]. It may be useful to extract

what Mahajan, J. has laid down in *Hanumant case* [AIR 1952 A SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“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:

(I) 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 Sahab Rao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 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,

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- A (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
- B (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.
- C 154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”
- D 19. This Court has held that there has to be a chain of evidence so complete so as not to leave any reasonable ground for a 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. It has
- E been held that the circumstances should be of a conclusive nature and tendency. This Court has held that the circumstances should exclude every possible hypothesis except the one to be proved. It has been held that the accused ‘must be’ and not merely ‘may be’ guilty before a Court can convict.
- F 20. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.
- G 21. In the present case, we find that the prosecution has utterly failed to establish the chain of events which can be said to exclusively lead to the one and only conclusion, i.e., the guilt of the accused. In that view of the matter, we find that the judgment and order of the learned Sessions Judge and that of the High Court are not sustainable.
- H 22. The appeal is therefore allowed. The judgment and order of conviction and sentence dated 11th/12th January 2005 of the learned Sessions Judge, Sonepat and the judgment and order of the High Court of Punjab and Haryana at Chandigarh dated 16th March 2009, dismissing the appeal of the accused/appellant-Ram Niwas are quashed and set

aside. The accused/appellant-Ram Niwas is acquitted of all the charges A charged with. The bail bonds shall stand discharged.

23. Pending applications, if any, shall stand disposed of.

Ankit Gyan

Appeal allowed.