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DEVI LAL

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 148 of 2010)

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JANUARY 08, 2019

**[RANJAN GOGOI, CJI, K.M. JOSEPH AND
AJAY RASTOGI, JJ.]**

Penal Code, 1860:

- C *s. 302 and s.120B – Murder alleged against four accused – Prosecution – Circumstantial evidence – Trial court convicted the two appellants-accused relying on evidence of three witnesses and on extra-judicial confession made by one of the appellant-accused – Other two accused were acquitted – High Court confirmed the order of trial court – On appeal, held: Extra-judicial confession is not proved – The chain of circumstances is also not complete and coherent to permit conviction of appellants-accused on the basis thereof without any trace of doubt – Appellants-accused are entitled to benefit of doubt and hence entitled to be acquitted.*

Evidence:

- E *Circumstantial evidence – Evidentiary value – Held: While scrutinising the circumstantial evidence, a court has to evaluate it to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused.*

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Extra-judicial confession

Evidentiary value – Held: Extra-judicial confession though is used against its maker, but on the face of it, is a weak evidence – It is advisable for the court to look for a corroboration with the other evidence on record.

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Jurisprudence:

Criminal jurisprudence – In the case of circumstantial evidence, if two views are possible (one pointing to the guilt and other to the innocence of the accused) the accused is entitled to have the benefit of one which is favourable to him.

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Allowing the appeals, the Court

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HELD: 1. The case of the prosecution is based on circumstantial evidence. The circumstances which lead the trial Judge to hold the appellants guilty under Section 302 and 120B IPC and confirmed by the High Court is primarily based on the evidence of complainant (PW-2), daughter of deceased (PW-5) and wife of deceased (PW-10) and also relied upon the extra judicial confession made by the co-accused 'B' to PW-3. [Para 6][173-A-B]

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2. Neither in the initial complaint on which the missing report was lodged nor at the stage after inquiry, when the FIR came to be registered (Exh. P-73), the name of appellant-accused 'D' surfaced. Even in the statement of PW-5, while recording statement under Section 164 CrPC, (Exh. D-5), no such reference was made of any conspiracy having been hatched by accused 'D'. In the testimony of PW-5 and PW-10, it was deposed that accused 'D' came to the house on 5th February 1999 and wanted to purchase the half portion of *Bada* from the deceased for a sum of Rs. 10,000/- 'D' threatened the deceased to sell his *Bada* which he refused. [Para 7][173-B-D]

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3. As regards appellant-accused 'B', it was deposed by PW-5 and PW-10 that he was known to their family as accused 'B' used to take money from the deceased and used to return the same. Deceased lended Rs. 50,000/- to accused 'B', which had been reduced into writing in the ledger book. When the deceased went to take money from 'B', he refused to return the same and started quarrelling. The deceased had informed this to PW-5 and PW-10. The money as demanded by the deceased led to suspicion of the commission of crime. But both the witnesses i.e. PW-5 and PW-10, in their cross-examination, stated that they did not know when accused 'B' had borrowed money from the deceased. [Para 8][173-D-F]

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4. It is true that an extra judicial confession is used against its maker but as a matter of caution, advisable for the Court to look for a corroboration with the other evidence on record. Extra judicial confession is, on the face of it, a weak evidence and the Court is reluctant, in the absence of a chain of cogent

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- A **circumstances, to rely on it, for the purpose of recording a conviction. In the instant case, there are no additional cogent circumstances on record to rely on it. At the same time PW-3, while recording his statement under Section 164 CrPC, has not made such statement of extra judicial confession(Exh. D-5) made by accused 'B'. In addition, there are no other circumstances on record to support it. [Para 9][173-G-H; 174-A-B]**

Gopal Sah v. State of Bihar (2008) 17 SCC 128 – relied on.

- 5.1 While scrutinising the circumstantial evidence, a Court C has to evaluate it to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straight jacket formula which can be laid down for the purpose.**
- D But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused. In the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him. [Paras 15, 17][177-C-E, G-H]**

Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 : [1985] 1 SCR 88; Sujit Biswas v. State of Assam (2013) 12 SCC 406 : [2013] 3 SCR 830; Raja alias Rajinder v. State of Haryana (2015) 11 SCC 43 : [2015] 3 SCR 947 – relied on.

- G 5.2 On an analysis of the overall fact situation in the instant case, and considering the chain of circumstantial evidence relied upon by the prosecution and noticed by the High Court in the impugned judgment, to prove the charge is visibly incomplete and incoherent to permit conviction of the appellants on the basis thereof without any trace of doubt. Though the materials on H**

record hold some suspicion towards them, but the prosecution has failed to elevate its case from the realm of “may be true” to the plane of “must be true” as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof. The appellants are thus entitled to the benefit of doubt. [Paras 16, 18][177-E-G; 178-B]

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<u>Case Law Reference</u>		
(2008) 17 SCC 128	relied on	Para 9
[1985] 1 SCR 88	relied on	Para 14
[2013] 3 SCR 830	relied on	Para 15
[2015] 3 SCR 947	relied on	Para 15

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 148 of 2010.

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From the Judgment and Order dated 30.01.2009 of the High Court of Rajasthan at Jodhpur in D.B. Criminal Appeal No. 852 of 2003.

WITH

Criminal Appeal No. 149 of 2010.

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Pallav Shishodia, Sr. Adv., Ms. Meera Bhatia (A.C.), H. D. Thanvi, Sarad Kumar Singhania, Digvijoy Sodhi, Advs. for the appellant.

Anish Roy, Milind Kumar, Advs. for the respondent.

The Judgment of the Court was delivered by

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RASTOGI, J. 1. Both the appellants, Babu Lal and Devi Lal are aggrieved by the affirmation of their conviction under Section 302 and other with the aid of Section 120 B of the Indian Penal Code and sentenced to life imprisonment under the impugned Judgment dated 30th January, 2009, seek this Court’s intervention.

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2. Brief facts of the case, as per prosecution, post-incident, are that on 8th February 1999 at 7.15 p.m. complainant Vijay Singh (PW-2) submitted a written report (Exhibit P-1) at Police Station, Nimbahera, informing that he and his cousin brother Dharam Chand(deceased) were living with their families in separate houses in village Binota. In the

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- A evening of 7th February, 1999 at 6.00 p.m., daughter of the deceased Dharam Chand informed him on telephone that her father, who had gone to Bhagwanpura on Motor Cycle, had not returned. The complainant, along with other neighbours, went to search deceased Dharam Chand on 8th February, 1999 and at village Bhagwanpura, outside the godown of brother deceased Dharam Chand, found his motorcycle but his whereabouts were not made known. On his written complaint, a missing person report (Exh. P-75) was lodged. The Investigating Officer, in the course of enquiry, made from Shambhu Singh (PW-3), revealed that on 7th February, 1999, accused Babu Lal had hired his jeep. Babu Lal and his labourers Logar and Bagdiram carried drum which contained wheat. The drum was alighted from the jeep on way near field of Logar, making Shambhu Singh to sit at the house of Logar and on excuse of responding to call of nature, Babu Lal, Logar and Bagdiram got away for about 1.30 hours. When they came back, the drum was not there. On inquiry by Shambhu Singh (PW-3), Babu Lal told that Logar and Bagdiram shall deliver it afterwards. On further inquiry, it revealed that on 5th February, 1999, hot altercations had taken place between Babu Lal and deceased Dharam Chand for some money transactions and on carrying such drum, Babu Lal caused some suspicion. During the course of search, it was found that from a dry well, bad odour was emitting. When freshly cut branches and leaves of the teak tree were removed, the dead body of the deceased Dharam Chand was found. On the basis of Exhibit P-73, formal FIR came to be registered on 11th February, 1999 at Police Station, Nimbahera.

- F 3. After the investigation, charge-sheet was filed against the four accused persons namely, Babu Lal, Devi Lal, Keshu Ram @ Panchiya Meena and Logar Rawat. All the four faced trial. The learned trial Judge by its impugned judgment acquitted the accused persons Keshu Ram @ Panchiya Meena and Logar Rawat holding accused Babu Lal guilty for the offence under Section 302 read with Section 34 and 120-B IPC and appellant Devi Lal for the offence of Section 120-B IPC, of hatching a conspiracy to commit murder.

- G 4. The appeals preferred by both the appellants before the High Court came to be dismissed affirming their conviction and sentence vide judgment impugned dated 30th January, 2009.

- H 5. Before advertizing to the rival submissions, it would be apposite to first take analysis of the evidence on record.

6. The case of the prosecution is based on circumstantial evidence. A The circumstances which lead the trial Judge to held the appellants guilty under Section 302 and 120B IPC and confirmed by the High Court is primarily based on the evidence of complainant Vijay Singh (PW-2), Vandna (PW-5) and Uma Devi (PW-10), daughter and wife of the deceased and also relied upon the extra judicial confession made by the co-accused Babu Lal to Shambhu Singh (PW-3). B

7. At the outset, it may be noticed that neither in the initial complaint on which the missing report was lodged nor at the stage after inquiry, when the FIR came to be registered (Exh. P-73), the name of appellant Devi Lal surfaced. Even in the statement of Vandna(PW-5), while recording statement under Section 164 CrPC, (Exh. D-5), no such reference was made of any conspiracy having been hatched by Devi Lal, the accused appellant. In the testimony of PW-5 Vandna and PW-10 Uma Devi, it was deposed that accused Devi Lal came to the house on 5th February 1999 and wanted to purchase the half portion of *Bada* from the deceased Dharam Chand for a sum of Rs. 10,000/. Devi Lal threatened the deceased to sell his *Bada* which he refused. D

8. As regards appellant Babu Lal, it was deposed by Vandna (PW-5) and Uma Devi (PW-10) that he was known to their family as Babu Lal used to take money from the deceased and to return the same. Deceased Dharam Chand lended Rs. 50,000/- to accused Babu Lal, which had been reduced into writing in the ledger book. When deceased Dharam Chand went to take money from Babu Lal, he refused to return the same and started quarrelling. The deceased had informed this to Vandna (PW-5) and Uma Devi (PW-10). The money as demanded by the deceased led to suspicion of the commission of crime. But both the witnesses Vandna (PW- 5) and Uma Devi (PW-10), in their cross-examination, stated that they did not know when the accused Babu Lal had borrowed money from the deceased. E F

9. It is true that an extra judicial confession is used against its maker but as a matter of caution, advisable for the Court to look for a corroboration with the other evidence on record. In *Gopal Sah v. State of Bihar* 2008(17) SCC 128, this court while dealing with extra judicial confession held that extra judicial confession is, on the face of it, a weak evidence and the Court is reluctant, in the absence of a chain of cogent circumstances, to rely on it, for the purpose of recording a conviction. In the instant case, it may be noticed that there are no additional cogent G H

- A circumstances on record to rely on it. At the same time, Shambhu Singh (PW-3), while recording his statement under Section 164 CrPC, has not made such statement of extra judicial confession(Exh. D-5) made by accused Babu Lal. In addition, there are no other circumstances on record to support it.
- B 10. The other connecting evidence on which reliance was placed by the prosecution was that accused Babu Lal had given information of handing over the torn leaf of *Bahi* obtaining signatures of deceased Dharam Chand to accused Devi Lal. Accused Devi Lal got the said leaf recovered by giving information to the Investigating Officer. There is no justifiable explanation available which came on record as to how the torn leaf came in the possession of Devi Lal as the said paper was torn from the *Bahi*(Article 27) which was recovered from the accused Babu Lal, which has been matched by FSL report. There was also no justification which came forward from the prosecution as to how the torn *Bahi* paper of Babu Lal containing the signatures of deceased Dharam Chand with black ink came to him. Pen was recovered on the information of accused Babu Lal, by which handwriting found on the leaf recovered from accused Devi Lal. The further circumstance was recovery of Rs. 11,200/- on the information given by the accused Babu Lal but from where this money had come to Babu Lal, was not clarified by the prosecution. The other circumstances completing the chain was that accused Devi Lal had not given any clarification with regard to the fact that by which information Devi Lal had come to Babu Lal which had been indicated in the diary recovered from accused Devi Lal under Section 27 of the Evidence Act. Accused Babu Lal was arrested on 13th February, 1999 and accused Devi Lal was arrested on 15th February, 1999 for the alleged incident of 7th February, 1999 which came to knowledge of informant on 8th February, 1999 and report was lodged on 11th February, 1999 and the alleged recovery of torn page of *Bahi*, which obtained signature of the deceased along with the diary of 1999(Exhibit P-79), under Section 27 of the Evidence Act was made on 24th February, 1999. The *Bahi*, as such, was never produced. Apart from non-production of *Bahi*, to prove the provenance of the torn piece of blank paper, the similarity of the ink on this torn piece of paper and ledger was extremely doubtful in view of the objection by the FSL and response lead to it which the Investigating Officer(PW-33) has also admitted in the cross examination.
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11. What was relied upon by the High Court was that paper Article 7 recovered on disclosure of appellant accused Devi Lal(from “Darraj” to Barsot”) was one which was torn away from *Bahi* recovered on information at the instance of the appellant Babu Lal. Secondly, that piece of paper had lower portion which had signatures of deceased Dharam Chand and other than that, the paper was blank.

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12. Summarily, the circumstances in totality apart from the extra judicial confession which has been noticed by the High Court are referred to as under:-

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“1. Appellant-Devilal wanted to purchase half portion of ‘*Bara*’ from deceased for which he actively pursued.

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2. On February 7th, in morning, around 9-10, deceased left for Bhagwanpura-not a very distant village.

3. Around 10-10.20 AM, he telling of going to house of Babulal for receiving money-went towards and to house(‘Nohra’) of Babulal.

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Going to house of Babulal-than never seen alive.

4. Jeep of Shambhu hired by Babulal on February 6th for use in evening of 7th for going village Dhikiya.

Then in evening of 7th around 8 p.m., Babulal and two other carried weighty drum which left at isolated site-body of deceased found in a dry well like pit-near the place drum was left.

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5. On information of Babulal, his own concealed clothes recovered from his house-also were blood stains on compound wall and soil of his ‘Nohra’. On clothes of Babulal and clothes of deceased blood ‘A’ group.

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Stains found on the floor of ‘Nohra’ of ‘A’ group.

Stains on wall of ‘Nohra’ of human blood.

6. On information of Babulal-that is from his possession, recovered a ‘*Bahi*’ – of the ‘*Bahi*’ a leaf about 7-8" X 6-7" was torn away.

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7. Babulal informed that above half torn leaf is with Babulal.

8. On information and at the instance of Devilal, that is from his possession, found above half torn leaf of ‘*Bahi*’-recovered from

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- A “Darraj”, that is a narrow space between frame of door and surrounding wall.
9. On this torn away leaf at lower side, are signatures of Dharam Chand-otherwise blank is the paper.”
- B 13. Without going into detailed scrutiny of the facts on record under consideration, the circumstances which emerged and taken note of under the impugned judgment in itself gives a suspicion in completing the chain of commission of crime beyond doubt, being committed by the accused appellants.
- C 14. The classic enunciation of law pertaining to circumstantial evidence, its relevance and decisiveness, as a proof of charge of a criminal offence, is amongst others traceable decision of the Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra*** 1984(4) SCC 116. The relevant excerpts from para 153 of the decision is assuredly apposite:-
- D “**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.
- E 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 & Anr. Vs. State of Maharashtra*** [(1973) 2 SCC 793 where the observations were made:
- G “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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(3) the circumstances should be of a conclusive nature and A 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.”

15. It has further been considered by this Court in *Sujit Biswas Vs. State of Assam* 2013(12) SCC 406 and *Raja alias Rajinder Vs. State of Haryana* 2015(11) SCC 43. It has been propounded that while scrutinising the circumstantial evidence, a Court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straight jacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.

16. On an analysis of the overall fact situation in the instant case, and considering the chain of circumstantial evidence relied upon by the prosecution and noticed by the High Court in the impugned judgment, to prove the charge is visibly incomplete and incoherent to permit conviction of the appellants on the basis thereof without any trace of doubt. Though the materials on record hold some suspicion towards them, but the prosecution has failed to elevate its case from the realm of “may be true” to the plane of “must be true” as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.

17. That apart, in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him. All the judicially laid parameters, defining the quality and content of the circumstantial

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A evidence, bring home the guilt of the accused on a criminal charge, we find no difficulty to hold that the prosecution, in the case in hand, has failed to meet the same.

18. In the given facts and circumstances, we are unable to sustain their conviction. The appellants are thus entitled to the benefit of doubt.

B Both the appeals succeed and are accordingly allowed. Appellant Devi Lal is already on bail. His bail bonds are discharged. Appellant Babu Lal who is in custody is directed to be released forthwith, if not required in any other case.

Kalpana K. Tripathy

Appeals allowed.