THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CRIMINAL APPEAL No.981 of 2013

JUDGMENT: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

Though the matter is listed on interlocutory application for suspension of sentence, preferred under Section 389(1) of Cr.P.C, the parties have agreed to argue the matter finally. The matter was heard with the consent of the parties finally.

2. The appellant/sole accused is aggrieved by the judgment dated 08.11.2013 passed by the learned Additional District and Sessions Judge, Vikarabad, Ranga Reddy District in S.C.No.25 of 2010, by which he has been convicted for offences punishable under Sections 302 and 201 I.P.C. and has been sentenced to undergo life imprisonment along with fine of Rs.10,000/- for the offence under Section 302 of I.P.C and to undergo seven years rigorous imprisonment along with a fine of Rs.5,000/- for the offence under Section 201 of I.P.C, with a default clause to undergo further simple imprisonment for a period of one year. The sentences have been directed to run concurrently.

3. The facts of the case reveal that on 15.05.2008 at about 9:00 AM, one Ananthaiah lodged a complaint at Kullakachrela Police Station stating that his mother, Smt. Anjilamma, had gone to work as a labour at Rajaiah's Brick Factory on 13.05.2008 and later she went to the house of Md. Rasheed,

who was celebrating Gyarme festival. It was also stated that her mother disappeared after that and on 15.05.2008, one Jakkulapally Venkataiah informed him about a female dead body lying in Patel Water Tank and he has identified the dead body of his mother. He has further stated that he suspects one Anjilaiah, who was having illegal intimacy with his mother and is responsible for the death of his mother. A case was accordingly registered in Crime No.43 of 2008 invoking the provisions of Section 174 of Cr.P.C. The police, after carrying out the investigation, filed a charge sheet.

4. The prosecution has examined as many as 11 witnesses (P.Ws.1 to 11) and as many as 12 documents were marked as Exs.P.1 to P.12. The defence has also produced three documents, which were marked as Exs.D.1 to D.3. The conviction in the present case is based upon the testimonies of P.W.1, P.W.2, P.W.3 and P.W.5. None of the witnesses examined by the prosecution are interested witnesses, except P.W.1, who is the son of the deceased.

The record of the case reveals that P.W.1 is the complainant and son of the deceased. P.W.2 is the daughter of the deceased. P.Ws.3 to 5 are the circumstantial witnesses. P.W.6 is the panch witness in respect of scene of offence, inquest and rough sketch. P.W.7 is the panch for confession and seizure. P.W.8 is the Medical Officer who conducted the post-mortem examination and P.Ws.9 to 11 are the Investigating Officers.

P.W.1, in his statement before the trial Court, has stated that he knows the accused since last five years and his mother left the house along with the accused to work as a coolie. He also stated that the wife of the accused used to quarrel with his mother and after working as a labour, on the date of the incident the accused went along with his mother to the house of one Md. Rasheed to have dinner. However, he has nowhere stated that the accused left with his mother after dinner was over.

Similarly, P.W.2, who is the daughter of the deceased, has stated that his mother went out on the date of the incident with the accused and returned home. She has further stated that later the accused along with her mother went to the house of Md. Rasheed to attend a dinner. However, she has also not stated that the accused and the deceased left the house of Md. Rasheed together after attending dinner. The only common statement made by them is that their mother went out to work as a labour with the accused and also went out to attend a dinner at the house of Md. Rasheed.

P.W.4, whose house is in front of the house of the deceased, has stated that the accused used to visit the house of the deceased on and off. However, he has not made any statement incriminating the accused with the crime.

P.W.5 is the person, at whose house dinner took place, namely Md. Rasheed. He has stated categorically that it was

the deceased alone who came to his house to have dinner. P.Ws.3, 4 and 5 have been declared hostile by the prosecution.

P.W.8, who is a Doctor working as a Senior Public Health Officer did autopsy over the body of the deceased and found contusions on the frontal right parietal, temporal and occipital region of the skull, right temporal muscle, lower slip including neck muscle besides other injuries. He has opined that the death was due to the pressure applied on the neck resulting in the fracture of the right hyoid bone. Meaning thereby, homicidal in nature.

P.W.6 is the panch witness and he has stated that in his presence, the body was taken out of the water tank and scene of offence panchanama and inquest panchanama were drawn in his presence and he has signed the same. He also stated that he noticed scratch marks on the face of the deceased Anjialamma. He also stated that the police drew the rough sketch of the scene of crime in his presence.

P.W.7 is also the panch witness and he has stated that he has gone to the police station five years back along with Vittal Naik, who is from his village, where the accused was present, and at the instance of the police, he enquired from the accused about the incident and the accused has confessed that he has killed a woman and at his instance, a wooden stick was seized by the police.

The trial Court, based upon the evidence of P.Ws.1 and 2, who have stated that their mother went out with the accused, has convicted the accused for offences punishable under Sections 302 and 201 of I.P.C.

The trial Court has taken into account extra-judicial confession of the appellant/sole accused as well as the statements of the panch witnesses, P.Ws.6 and 7 and the seizure of the wooden stick at the behest of the appellant/sole appellant and has arrived at a conclusion that the injuries, which were found on the body of the deceased were caused with the seized stick, keeping in view the evidence of the medical officer. The trial Court has held that the evidence of circumstantial witnesses, i.e., P.Ws.3 and 5, panch witnesses along with the evidence of P.Ws.1 and 2, who are the children of the deceased, and injuries on the dead body, when all read together, clearly establishes the fact the appellant/sole accused has in fact committed the offence of murder. The trial Court has also held that no explanation was offered in respect of the disappearance of the deceased after parting with his company. Thus, in short, the trial Court based upon circumstantial evidence has arrived at a conclusion that it was the appellant/sole accused, who has committed the offence of murder.

Another important aspect of the case is that the stick was recovered the behest of the accused. However, there was no F.S.L. Report in respect of any bloodstains on the stick.

The entire case of the prosecution is based upon circumstantial evidence and based upon the circumstantial evidence, the appellant has been convicted by the trial Court.

5. The Hon'ble Supreme Court has dealt with the issue of conviction based upon the circumstantial evidence and has held that the Judge while deciding matters resting on circumstantial evidence should always tread cautiously so as to not allow conjectures or suspicion, however strong, to take the place of proof. Paragraphs 30 and 66 of the Judgment delivered by the Hon'ble Supreme Court in the case of **Pattu Rajan v. State of Tamil Nadu**[1] are reproduced as under:-

> "30. Before we undertake a consideration of the evidence supporting such circumstances, we would like to note that the law relating to circumstantial evidence is well settled. The Judge while deciding matters resting on circumstantial evidence should always tread cautiously so as to not allow conjectures or suspicion, however strong, to take the place of proof. If the alleged circumstances are conclusively proved before the Court by leading cogent and reliable evidence, the Court need not look any further before affirming the guilt of the accused. Moreover, human agency may be faulty in expressing the picturisation of the actual incident, but circumstances cannot fail or be ignored. As aptly put in this oft-quoted phrase: "Men may lie, but circumstances do not".
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> 66. In our considered opinion, the prosecution has proved the complicity of all the appellants in murdering Santhakumar by strangulating him and thereafter throwing the dead body at Tiger-Chola. It is worth recalling that while it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that such proof should be perfect, and someone who is guilty cannot get away with impunity only because the truth may develop some infirmity when projected through human processes. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for

[1] (2019) 4 SCC 771

> administering justice in a criminal trial. Justice cannot be made sterile by exaggerated adherence to the rule of proof, inasmuch as the benefit of doubt must always be reasonable and not fanciful. [See *Inder Singh* v. *State (UT of Delhi)* [*Inder Singh* v. *State (UT of Delhi)*, (1978) 4 SCC 161 : 1978 SCC (Cri) 564] ; *State of H.P.* v. *Lekh Raj* [*State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247 : 2000 SCC (Cri) 147]; *Takhaji Hiraji* v. *Thakore Kubersing Chamansing* [*Takhaji Hiraji* v. *Thakore Kubersing Chamansing*, (2001) 6 SCC 145 : 2001 SCC (Cri) 1070] and *Chaman* v. *State of Uttarakhand* [*Chaman* v. *State of Uttarakhand*, (2016) 12 SCC 76 : (2016) 4 SCC (Cri) 6] .]"

In the present case, it is true that the deceased went out to work as a labour with the appellant/sole accused. However, the deceased and the accused went to the house of Md. Rasheed to attend dinner and they never left together after attending the dinner. In fact, there is no evidence on record to establish that the deceased and the accused left together after the dinner. The only statement, which has been made by P.Ws.1 and 2 is that their mother went out to work as labour with the accused and therefore, the theory of last seen together is not applicable in the present case.

6. The Hon'ble Supreme Court in the case of **Gargi v. State of Haryana**[2] has again dealt with the conviction based upon circumstantial evidence. In the aforesaid case, there was a gap between point of time when the accused and the deceased were last seen together. Paragraphs 33.1 and 33.3 of the aforesaid Judgment read as under:-

> "33.1. Insofar as the "last seen theory" is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person

[2] (2019) 9 SCC 738

the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The trial court and the High Court have proceeded on the assumption that Section 106 of the Evidence Act ["**106. *Burden of proving fact especially within knowledge*.**—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."] directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in *Sawal Das* [*Sawal Das* v. *State of Bihar*, (1974) 4 SCC 193 : 1974 SCC (Cri) 362] in the following : (SCC p. 197, para 10)

> "*10*. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused."

33.3. In the given set of circumstances, the last seen theory cannot be operated against the appellant only because she was the wife of the deceased and was living with him. The gap between the point of time when the appellant and the deceased were last seen together and when the deceased was found dead had not been that small that possibility of any other person being the author of the crime is rendered totally improbable. In *Sk. Yusuf* [*Sk. Yusuf* v. *State of W.B.*, (2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620], this Court has said : (SCC pp. 760-61, para 21)

> "*21*. The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible."

In the present case also, the appellant/sole accused and the deceased went out together to work as a labour and thereafter the deceased went to the house of Md. Rasheed to attend dinner and it is nobody's case that they left the house together and they were seen together in the morning. There was a substantial gap between the point of time when they

were last seen together and therefore, the conviction based upon the circumstantial evidence is bad in law.

7. The Hon'ble Supreme Court in the case of **Gargi** (supra) has dealt with the principles governing the circumstantial evidence in paragraphs 17 and 18, which are reproduced as under:-

> "17. When the present case pivots around circumstantial evidence, having regard to the questions involved, apposite it would be to take note of a few fundamental principles governing the circumstantial evidence and its appreciation.
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> 18. It remains trite that in judicial proceedings, proof is made by means of production of evidence, which may be either oral or documentary. As regards its nature, the evidence is either direct or circumstantial. The direct evidence proves the existence of a particular fact that emanates from a document or an object and/or what has been observed by the witness. The circumstantial evidence is the one whereby *other facts are proved from which the existence of fact in issue may either be logically inferred, or at least rendered more probable.* [*A Text Book of Jurisprudence* by G.W. Paton, 4th Edn., p. 598.]
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> 18.1. In umpteen number of decisions, this Court has explained the essentials before a particular fact could be held proved by way of the proof of other fact or facts; and has expounded on the principles as to how circumstantial evidence need to be approached in a criminal case. We need not multiply on the case law on the subject; only a brief reference to the relevant decisions would suffice.
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> 18.2. In *Chandmal* v. *State of Rajasthan* [*Chandmal* v. *State of Rajasthan*, (1976) 1 SCC 621 : 1976 SCC (Cri) 120], this Court said : (SCC p. 625, para 14)
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> > "*14.* It is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Secondly, these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis save that of the accused's guilt."
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> 18.3. In *Sharad Birdhichand Sarda* v. *State of Maharashtra* [*Sharad Birdhichand Sarda* v. *State of Maharashtra*,

(1984) 4 SCC 116 : 1984 SCC (Cri) 487], this Court laid down the golden principles of standard of proof required in a case sought to be established on circumstantial evidence with reference to several past decisions, including that in *Hanumant* v. *State of M.P.* [*Hanumant* v. *State of M.P.*, AIR 1952 SC 343 : 1953 Cri LJ 129] , in the following : (SCC p. 185, paras 153-54)

"*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* [*Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] where the observations were made : [SCC p. 807, para 19 : SCC (Cri) p. 1047]

> '*19*. ... 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."

18.4. In the decision cited by the learned counsel for the appellant in *Sonvir* [*Sonvir* v. *State (NCT of Delhi)*, (2018) 8 SCC 24 : (2018) 3 SCC (Cri) 486], this Court, after taking note of the other cited decisions, pointed out the principles as under : (SCC p. 52, para 82)

> "*82*. ... Law of conviction based on circumstantial evidence is well settled. It is sufficient to refer to the judgment of this Court in *Ramesh* v. *State of Rajasthan* [*Ramesh* v. *State of Rajasthan*,

(2011) 3 SCC 685 : (2011) 2 SCC (Cri) 54] where in para 17 the following has been held : (SCC p. 693)

> '*17.* Before we proceed with the matter, it has to be borne in mind that this case depends upon circumstantial evidence and, as such, as per the settled law, every circumstance would have to be proved beyond reasonable doubt and further the chain of circumstances should be so complete and perfect that the only inference of the guilt of the accused should emanate therefrom. At the same time, there should be no possibility whatsoever of the defence version being true.'"

18.5. Thus, circumstantial evidence, in the context of a crime, essentially means such facts and surrounding factors which do point towards the complicity of the charged accused; and then, chain of circumstances means such unquestionable linking of the facts and the surrounding factors that they establish only the guilt of the charged accused beyond reasonable doubt, while ruling out any other theory or possibility or hypothesis.

18.6. Incidental to the principles aforesaid, which are neither of any doubt nor of any dispute, profitable it would be to keep in view the caveat entered by G.W. Paton [*A Text Book of Jurisprudence* by G.W. Paton, 4th Edn., p. 598.] as regards circumstantial evidence thus:

> "On the other hand, circumstances may mislead or false clues may have been laid by the wrongdoer to cast suspicion on another." [This has been stated with reference to in Criminal Law by C.S. Kenny wherein, it is cautioned that : though 'circumstances cannot lie', they can mislead. They may even have been brought about for the very purpose of misleading, as when Joseph's silver cup was placed in Benjamin's sack, or when Lady Macbeth 'smeared the sleeping grooms with blood'.]

Keeping in view the aforesaid principles laid down by the Hon'ble Supreme Court and keeping in view the evidence on record, as the chain of events is not complete in the present case, the conviction of the appellant/sole accused is bad in law.

8. The Hon'ble Supreme Court in the case of **State of Rajasthan v. Mahesh Kumar**[3] in paragraphs 10 and 12 has held as under:-

> "10. It is well settled that in the cases of circumstantial evidence, 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 guilt of the accused. The circumstances should be of

[3] (2019) 7 SCC 678

> a conclusive nature and should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a complete chain of evidence 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 and none else.
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> 12. It has been further relied on by this Court in *Sujit Biswas* v. *State of Assam* [*Sujit Biswas* v. *State of Assam*, (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] and *Raja* v. *State of Haryana* [*Raja* v. *State of Haryana*, (2015) 11 SCC 43 : (2015) 4 SCC (Cri) 267] and has been propounded that while scrutinising the circumstantial evidence, it is the duty of the Court to evaluate it to ensure the chain of events clearly established and completely to rule out any reasonable likelihood of innocence of the accused. It is true that the underlying principle whether the chain is complete or not, indeed would depend on the facts of each case emanating from the evidence and there cannot be a straitjacket formula which can be laid down for the purpose. It is always to be kept in mind that the circumstances adduced when considered collectively, 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."

The Hon'ble Supreme Court has held that as the circumstantial evidence should be of conclusive nature and should be such as to exclude every hypothesis but the one proposed to be proved. The chain of evidence must be complete chain of evidence to arrive at a conclusion that it is only the accused who has committed offence.

In the present case, the chain of evidence is not complete. It was not established that the stick, which was recovered at the behest of the accused, was the same stick used for causing injuries over the body of the deceased resulting in her death. The so called extra-judicial confession

was in presence of police, and therefore, in the light of the aforesaid judgment, the conviction of the accused is bad in law and deserves to be set aside.

9. The Hon'ble Supreme Court in the case of **Suresh v. State of Haryana**[4] has dealt with the extra-judicial confession. Paragraph 50 of the aforesaid Judgment reads as under:-

> "50. Now we need to concentrate on the relevance of the alleged confessions of the co-accused made before Zile Singh (PW 16). In *Periaswami Moopan, In re* [*Periaswami Moopan, In re*, 1930 SCC OnLine Mad 86 : AIR 1931 Mad 177] , Reilly, J. observed: (SCC OnLine Mad)
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> > "*… where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence.*"
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> Therefore, the aforesaid extra-judicial confession against the co-accused needs to be taken into consideration if at all it is one, only if other independent evidence on record have established the basic premise of the prosecution. The confession of the co-accused cannot be solely utilised to convict a person, when the surrounding circumstances are improbable and create suspicion (refer to *Haricharan Kurmi* v. *State of Bihar* [*Haricharan Kurmi* v. *State of Bihar*, AIR 1964 SC 1184 : (1964) 2 Cri LJ 344]). As the confession of a co-accused is weak piece of evidence, we need to consider whether other circumstances prove the prosecution case."

The Hon'ble Supreme Court in the aforesaid Judgment has held that extra-judicial confession cannot be the sole basis of conviction and cannot be relied on when surrounding circumstances are improbable and create suspicion. The weak piece of evidence is the extra-judicial confession which was recorded in the presence of the police and the chain of

[4] (2018) 18 SCC 654

evidence is certainly not at all complete and therefore, the conviction of the accused deserves to be set aside.

10. The Hon'ble Supreme Court in the case of **Satish Nirankari v. State of Rajasthan**[5], in paragraphs 29, 30 and 31 has held as under:-

> "29. It is now well established, by a catena of judgments of this Court, that circumstantial evidence of the following character needs to be fully established:
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> (*i*) Circumstances should be fully proved.
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> (*ii*) Circumstances should be conclusive in nature.
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> (*iii*) All the facts established should be consistent only with the hypothesis of guilt.
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> (*iv*) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused (see *State of U.P.* v. *Ravindra Prakash Mittal* [*State of U.P.* v. *Ravindra Prakash Mittal*, (1992) 3 SCC 300 : 1992 SCC (Cri) 642]; *Chandrakant Chimanlal Desai* v. *State of Gujarat* [*Chandrakant Chimanlal Desai* v. *State of Gujarat*, (1992) 1 SCC 473 : 1992 SCC (Cri) 157]). It also needs to be emphasised that what is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion, however grave, cannot take place of legal proof. In the case of circumstantial evidence, the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other person.
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> 30. The following tests laid down in *Padala Veera Reddy* v. *State of A.P.* [*Padala Veera Reddy* v. *State of A.P.*, 1989 Supp (2) SCC 706 : 1991 SCC (Cri) 407] also need to be kept in mind : (SCC pp. 710-11, para 10)
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> > "*10.* (*1*) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
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> > (*2*) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
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> > (*3*) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
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> > (*4*) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

[5] (2017) 8 SCC 497

> 31. Sir Alfred Wills in his book *Wills' Circumstantial Evidence* (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:
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> "(*1*) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;
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> (*2*) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;
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> (*3*) in all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits;
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> (*4*) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and
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> (*5*) if there by any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

Keeping in view the aforesaid Judgement, no prudent person can draw a conclusion that the chain of events is complete. It is true that the stick which was allegedly used for causing injuries resulting in her death was recovered at the behest of the appellant/sole accused, however, there is no FSL Report in respect of any blood stains on the stick.

11. The trial Court has taken into account the extra-judicial confession. However, it does not help the prosecution at all, as the chain of events does not lead to the result i.e., accused committing the crime of murder. The appellant/sole accused has been convicted based upon the circumstantial evidence and the chain of events is certainly incomplete. It is true that P.W.1 and P.W.2 have stated that their mother went out of the house along with the appellant to work as a labour. However, they have stated that after working as a labour for

the whole day, the appellant and the deceased went to the house of Md. Rasheed. There is no evidence on record of any person stating that they left the house of Md. Rasheed together.

Therefore, in the considered opinion of this Court, as the evidence does not establish the factum of crime to be attributed to the present appellant/sole accused, this Court is of the opinion that the impugned judgment delivered by the trial Court deserves to be set aside and is accordingly set aside.

Resultantly, the Criminal Appeal stands allowed. The appellant/sole accused is acquitted of the offences for which he was charged. The appellant/sole accused shall be set at liberty forthwith, if not wanted in any other case.

Miscellaneous applications pending, if any, shall stand closed.

SATISH CHANDRA SHARMA, CJ

ABHINAND KUMAR SHAVILI, J

08.02.2022
JSU/PLN