

(2021) 11 OHC CK 0160
In the Orissa High Court
Case No : Criminal Appeal No. 16 Of 2003

Alekh Bhainsa @ Menu

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 24-11-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 374(2)
Indian Penal Code, 1860 — Section 302
Evidence Act, 1872 — Section 8

Citation : (2021) 11 OHC CK 0160

Hon'ble Judges : Dr. S. Muralidhar, CJ; A.K. Mohapatra, J

Bench : Division Bench

Advocate : Ram Prasad Mohapatra, Deepali Mahapatra, J. Katikia

Final Decision : Dismissed

Judgement

A.K. Mohapatra, J.

1. Present criminal appeal has been filed by the sole Appellant under Section 374(2) of the Code of Criminal Procedure challenging the judgment and sentence dated 27th November, 2002 passed by the learned Additional Sessions Judge, Jharsuguda in S.T. Case No.254/82 of 1999 thereby convicting the accused-Appellant under Section 302 of the Indian Penal Code (in short 'the I.P.C.') and sentenced to undergo imprisonment for life.

2. Heard learned counsel for the Appellant and learned Additional Government Advocate for the State. Perused the records.

3. The prosecution story, in a nut-shell, is that the son of the deceased, namely, one Janmejaya Kissan lodged an F.I.R. before the O.I.C., Jharsuguda Police Station on 28th August, 1996 alleging that the deceased Ganeswar Kissan was serving as a Mason and he was aged about 55 years at the time of occurrence. The accused-Appellant Menu @ Alekh Bhainsa was also serving as a mason. During the night on 19.08.1996, the Appellant went to the house of the deceased

Ganeswar Kissan and asked him to come with him saying that the contractor was calling him for the purpose of a discussion in connection with the contract work. The deceased went with the accused-Appellant with the assurance that if their return gets delayed, the Appellant would drop the deceased at his residence. When the deceased did not return back to his residence in the night of the occurrence, his son the informant went to the house of the Appellant to search for his father, but he did not find his father. In the following morning, the son of the deceased again went to the house of the Appellant and enquired about of his father, but he did not get any concrete information. At about 7.00 A.M., the informant got the information that the dead body of his father was lying in the orchard of one Prabhu Kedia of Purna village. The deceased Ganeswar also happens to be the resident of the same village. On getting such information, the informant proceeded to the orchard area and found the dead body of his father lying in pool of water. The informant found cut injuries on the neck, chest and belly of the deceased. Thereafter, the informant went to the police station and lodged an F.I.R. which is marked as (Ext.1).

On the basis of the F.I.R. lodged by the informant, Jharsuguda Police registered Jharsuguda P.S. Case No.174 (17) dated 20.08.1996. At about 10.15 A.M. in the morning, the concerned police took up the investigation; send the dead body for post-mortem examination to the District Headquarters Hospital, Jharsuguda and after completion of investigation of the case, Jharsuguda police has submitted a charge sheet against the Appellant under Section 302, I.P.C.

4. The Appellant faced trial for commission of offence under Section 302, I.P.C. after charge was framed against the Appellant under the aforesaid section and after the Appellant pleaded to be not guilty of the charge.

5. To bring home the charges, the prosecution has examined in total eight witnesses. Out of whom, P.W.1 is the informant himself, P.W.2 Dr. Arun Kumar Dash is the Medical Officer who conducted the post-mortem examination, P.W.3 is Dillip Pandey the witness to the inquest, P.W.4 Guru Charan Kissan and P.W.5 Parsu Kissan are the witnesses to the discovery of weapon of offence., P.W.6 Fagua Singh is the Investigating Officer and P.W.8 is Pradeep Kumar Mohapatra, the then O.I.C. of Jharsuguda Police Station and final Investigating Officer.

On the contrary, the defence took a stand of complete denial; however, no witnesses were examined in support of its plea of denial.

6. The prosecution examined the Dr. Aruna Kumar Dash as P.W.2 to prove the fact that the death was homicidal. P.W.2 who conducted the post-mortem over the dead body has stated in his evidence that he is a Specialist of Medicines and was attached to the District Headquarters Hospital, Jharsuguda. On police requisition he had conducted the post-mortem examination over the dead body of the deceased and found the following injuries on the body of the deceased:

"i) Incised wound over the left third inter coastal space of 1 1/2" x 1/2" inside the thorasis cavity. The direction of the wound was inclined oblique. The edges were

everted and blood was coming out of the wound.

ii) Incised wound over the left 5th inter costal space 1 1/2" x 1/2" in to thoracic cavity. The direction of the wound was inclined and oblique. The edges were everted and blood was coming out of the said wound.

iii) Incised wound over the right side of the abdomen below costal margin. The direction of the wound was horizontal and of 1 1/2" x 1/2" in the abdominal cavity.

iv) Incised wound over the left side of the neck 1" x 1/2". The direction of the wound was vertical in nature.

v) Incised wound over the left thigh on the outer side and was of 1" x 1/2" 1/2" in size.

vi) Incise wound over the left arm on the back side of the arm. The size of the wound was 1" x 1/2" 1/2".

Before the learned trial court, the defence disputed the post mortem report (Ext.3) on the ground that the same is not the original copy, rather the same is a carbon copy and, as such, pleaded that the same is not admissible in evidence. After careful examination and analysis of the evidence, learned trial court in paragraph-7 of the judgment while taking note of the evidence of the P.W.2, has accepted Ext.3 as a legally admissible document. On a careful scrutiny of the entire evidence, this court is also of the view that the Ext.3 is a legally valid document and the learned trial court has committed no error in accepting the same as evidence since Ext.3 being a Carbon copy of the post-mortem report, prepared in the same process while preparing the original post-mortem report which fact is well supported by the evidence of the doctor P.W.2, who is the creator of such a document. Hence, the learned trial court has not committed any error of law in admitting the same in evidence.

The P.W.2 in his evidence has stated that all the external and internal injuries found on the person of the deceased during postmortem examination conducted by him were all ante mortem in nature and might have been caused by sharp cutting weapon such as knife. According to P.W.No.2 the doctor, the probable cause of death was the injuries caused to vital organ like heart, resulting in haemorrhage and shock. The death might have been caused within 18 to 24 hours from the time of his examination, i.e. conducting the

post-mortem examination. In ordinary course of nature, injury Nos.1 and 2 are sufficient enough to cause death of a person. Further he has stated that the Carbon copy of the post-mortem report, which was filed in Court and marked as (Ext.3), is the same carbon copy of the post-mortem report prepared by him under the same carbon process. The P.W.2 in paragraph-6 of his examination-in-Chief has stated as follows :-

"6. The injuries which I detected on the person of the deceased can be caused by the "PANIKI" shown to me in Court today."

7. The aforesaid evidence of the doctor clearly indicates that the deceased had sustained cut injuries. The injury Nos.1 and 2 are sufficient to cause death of a person. The injuries were all ante mortem in nature. The death might have been caused within 18 to 24 hours prior to the post-mortem examination. The injuries pointed out in the post-mortem report (Ext.3) could be caused by the "PANIKI" (M.O.-III). The cause of death is due to haemorrhage and shock as a result of injuries caused to vital organ like heart.

It is relevant to note here that, on careful scrutiny of the post-mortem report (Ext.3), the time of the post-mortem examination is mentioned as 5.00 P.M. on 20.08.1996. Therefore, in view of the opinion of the P.W.2 that the death might have occurred 18 to 24 hours prior to post-mortem examination indicates that the death might have occurred in between the evening and late night of the preceding day. Such medical evidence corroborates the other evidences relating to the scenario when the appellant and the deceased were last seen together and where after the deceased was found dead. The time of death as indicated by P.W.2 in the postmortem report has a very close and reasonable proximity with the time when both appellant and deceased were last seen together. This piece of evidence coupled with the fact that the defence has not given any explanation whatsoever as to what happened after both appellant and deceased went out of the house of the deceased, is a strong link in the chain of circumstances against the appellant. It is quite believable that the occurrence causing death of the deceased must have taken place in the late evening hours of the preceding day, i.e. 19.08.1996.

8. It is true that there are no eye witnesses to the occurrence. The conviction of the Appellant under Section 302, I.P.C. is based on circumstantial evidence gathered by the Jharsuguda Police. It is needless to mention here that, to sustain conviction passed on circumstantial evidence, learned trial court has to see and ensure that each and every link in the chain of circumstances are well connected and each chain must be supported by reliable evidence on record. The law laid down by the Hon'ble Supreme Court of India in the case of criminal trial based on circumstantial evidence is discussed hereunder;

The Hon'ble Supreme Court of India in Hanumant Govind Nargundkar v. State of M.P. reported in AIR 1952 SC 343 while considering an appeal against conviction based on circumstantial evidence, observed thus:

"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 be 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."

In *Sharad Birdhichand Sarda v. State of Maharashtra*, reported in AIR 1984 SC 1622, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of the Hon'ble Supreme Court of India, before conviction could be based on circumstantial evidence, the following conditions must be satisfied;

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

In *State of U.P. vs. Satish*, reported in (2005) 3 SCC 114, the Hon'ble Supreme Court has observed as follows;

"14. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

17. When the evidence on record is analyzed in the background of principles highlighted above, the inevitable conclusion is that the prosecution has established its accusations."

With the touchstone of the above noted principles laid down by the Hon'ble Supreme Court of India, the evidence adduced by the prosecution in the present case needs to be scanned.

9. While scanning the evidence on record, this Court found that there are some flaws in the investigation of the case and there also exists weak links in the chain of circumstance like non-examination of some witnesses, etc. However, some lacuna has been filled up by other relevant evidences corroborating and linking the evidences to complete the chain of circumstance leading to the guilt of the accused-Appellant. The learned trial court while appreciating the evidence in the case of this nature, has to take a holistic view of the matter and must come to a

conclusion that the evidences on record taken in its entirety only leads to a conclusion that the involvement of the appellant is an absolute certainty and stands proved beyond all reasonable doubt. All pointers must indicate only towards the accused and no other view is possible in the matter. In the present context, the law enunciated by the Hon'ble Supreme Court of India needs to be examined and the same are given here in below;

In *Shyamal Ghosh vs. State of West Bengal*, reported in (2012) 7 SCC 646, the Hon'ble Supreme Court of India has observed as follows;

"58. Of course, there are certain discrepancies in the investigation inasmuch as the Investigating Officer failed to send the blood stained gunny bags and other recovered weapons to the FSL, to take photographs of the shops in question, prepare the site plan thereof, etc. Every discrepancy in investigation does not weigh with the Court to an extent that it necessarily results in acquittal of the accused. These are the discrepancies/lapses of immaterial consequence. In fact, there is no serious dispute in the present case to the fact that the deceased had constructed shops on his own land. These shops were not the site of occurrence, but merely constituted a relatable fact. Non-preparation of the site plan or not sending the gunny bags to the FSL cannot be said to be fatal to the case of prosecution in the circumstances of the present case. Of course, it would certainly have been better for the prosecution case if such steps were taken by the Investigating Officer.

59. In *C. Muniappan v. State of Tamil Nadu* : (2010) 9 SCC 567), this Court has clearly stated the principle that;

"55.the law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Similar view was taken by this Court in the case of *Sheo Shankar Singh v. State of Jharkhand and Anr.* (2011) 3 SCC 654 wherein the Court held that failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the Court. As to what should be the weight attached to such an identification is a matter which the court would determine in the peculiar facts and circumstances of each case.

Similarly, failure to make reference to the FSL in the circumstances of the case is no more than a deficiency in the investigation of the case and such deficiency does not necessarily lead to a conclusion that the prosecution case is totally unworthy of credit."

10. The deceased was last seen along with the Appellant but had gone to the house of the deceased to call him and take him to a contractor for discussion in connection with a work. Thereafter, nobody has seen the deceased and the deceased was missing till his body was recovered in the next day morning. Both

the Appellant and the deceased were seen together when they left the house of the deceased to go to the contractor for discussion in connection with a work. Such a circumstance creates a strong suspicion in the mind of the court regarding the involvement of the Appellant in the crime. This is substantial when no other story or probability is coming forward from the side of defence. The defence has neither examined any witness nor has the Appellant stated anything in his statement under Section 313 of the Cr.P.C. to disbelieve the aforesaid last seen together circumstance. The defence has failed miserably to elicit anything substantial in their cross-examination of P.W.1 and P.W.7 so that the court would disbelieve their part of the evidence. No doubt P.W.1 and P.W.7 are related to the deceased as son and wife respectively. Such fact alone is not sufficient to disbelieve or discard their evidence. Only requirement under the law is to

examine their evidences carefully. On careful examination of evidences of the P.Ws.1 and 7, we found no inconsistency in their evidence and the trial court has rightly relied upon their evidences in its judgment.

11. The last seen together circumstance has been proved in this case beyond any reasonable doubt by the evidence brought on record by prosecution. Such a circumstance is very vital for the prosecution case. There are several case laws where the conviction has been upheld basing on the last seen theory.

The Learned Counsel for the State, Mr. Katakia heavily relies upon the judgment of the Hon'ble Supreme Court of India in the matter of State of U.P. vs. Satish : reported in (2005) 3 SCC 114 where in it has been observed as follows;

"22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last 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.

23. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2."

Mr. Katakia also relies upon some of the paragraphs of the judgment of the Hon'ble Supreme Court of India in Shyamal Ghosh vs. State of West Bengal : reported in (2012) 7 SCC 646.

Relevant paragraphs are quoted here in below;

"72. Then, it is also contended and of course with some vehemence that where the prosecution is relying upon the last seen theory, it must essentially establish the time when the accused and deceased were last seen together as well as the time of the death of the deceased. If these two aspects are not established, the

very application of the 'last seen theory' would be impermissible and would create a major dent in the case of the prosecution. In support of this contention, reliance is placed upon the judgment of this Court in the case of S.K. Yusuf v. State of West Bengal (2011) 11 SCC 754).

73. Application of the 'last seen theory' requires a possible link between the time when the person was last seen alive and the fact of the death of the deceased coming to light. There should be a reasonable proximity of time between these two events. This proposition of law does not admit of much excuse but what has to be seen is that this principle is to be applied depending upon the facts and circumstances of a given case. This Court in para 21 of Yusuf's case (supra) while referring to the case of Mohd. Azad @ Samin v. State of West Bengal (2008) 15 SCC 449) and State through Central Bureau of Investigation v. Mahender Singh Dahiya (2011) 3 SCC 109), held as under:

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."

12. The next question that falls for consideration is, the circumstance leading to discovery of the weapon of offence, i.e. vegetable cutter, which is known as "PANIKI" at the instance of the Appellant during investigation of the case. P.Ws.4 and 5 are the witnesses to the recovery of the weapon of offence. However, during trial these two witnesses turned hostile and did not support the case of the prosecution. So far the recovery of weapon of offence is concerned, the learned trial court has relied upon the evidence of P.W.8, the Investigating Officer, regarding the circumstances under which the accused led the police for discovery of the weapon of offence. The evidence of P.W.8 reveals that the Appellant had stated before him that he kept "PANIKI" concealed in "KHAPPER roof" of his house. P.W.8 had also stated that he had recorded the disclosure statement of the accused Appellant in a separate paper vide (Ext.5). The Appellant led the police team to his house after making the statement and gave recovery of the weapon

of offence by bringing the same out of the "KHAPPER ROOF" of his house. The weapon of offence (M.O.-III) was shown to the doctor P.W.2 during his examination, and in paragraph 6 of his evidence in chief, P.W.2 has opined affirmatively and stated that the injuries which he found on the person of the deceased during post-mortem examination are possible by "PANIKI" (M.O.-III).

13. The defence took a plea that no bloodstain was found on (M.O.-III) after the same was sent for chemical examination. The Prosecution rebutted such allegation by saying that in the night of occurrence, there was heavy rain fall and therefore, the bloodstain on the weapon of offence (M.O.-III), by which the murder was committed, must have been washed away in the rain water. It is a matter of record that there was heavy rain fall in the night of occurrence and, as

such, the stand of the prosecution, i.e. bloodstain might have been washed away by the rain water is quite possible and believable.

14. Learned trial court has very carefully examined the evidence of the P.W. No.8, the Investigating Officer. After detailed scrutiny, learned trial court has come to the conclusion that neither there is evidence on record nor the defence has adduced any evidence to impeach the credibility of the evidence of P.W.8. The defence has failed to elicit any substantial evidence in the cross-examination of P.W.8 to impeach his credibility and reliability. Merely because P.W.8 is a police officer, his evidence cannot be simply brushed aside until and unless the defence comes forward with some evidence to impeach the credibility of the evidence of P.W.8. In the present case, the defence has miserably failed to bring any evidence on record to falsify or discredit the evidence of P.W.8. In such view of the matter, the trial court has not committed any illegality by relying upon the evidence of P.W.8 with regard to discovery of weapon of offence.

15. The conduct of the Appellant after the occurrence took place lends great deal of support to the prosecution version. The Appellant, who invited the deceased to go along with him, absconded from his village after the occurrence took place for near about a month. Both the Police Officers investigating the case, i.e. P.W.6 and P.W.8 have clearly stated in their evidences that the Appellant immediately after the occurrence was absconding. Several attempts were made by the police to arrest him but yielded no result and finally P.W.8 after taking over investigation from the P.W.6 on 25.09.1996 conducted a raid on 26.09.1996 in the house of Balaram Kharsel in the village Baddhuduriam under Likera P.S. and arrested the Appellant at 4.00 P.M. on 26.09.1996. Immediately after arrested, P.W.8 recorded the statement of the Appellant, wherein the Appellant had not only admitted about the commission of the crime with the help of M.O.-III, but also he has revealed about the weapon of offence which was concealed by him in the "KHAPPER roof" of his house. The ascendance from the village coupled with the last seen together theory and absence of any explanation from the side of the appellant definitely leads to an irresistible conclusion that the involvement of the appellant is proved beyond any reasonable doubt. The proximity between the time when the appellant and deceased were last seen together and the time of occurrence as per medical evidence is so close and in the absence of any other evidence with regard to intervention of any other person in between, compels us to believe that the appellant is the author of the crime and none else.

Relying on the decision of the Hon'ble Supreme Court of India in Shyamal Ghosh vs. State of West Bengal (Supra), Mr. Katakia argued with vehemence that ascendance of the appellant from the village for near about a month is a very strong circumstance to believe that the appellant has committed the crime, and to hide from police and the judiciary he had no other option than to run away from the village after hiding the weapon of offence in the "Khappar Roof" of his house in the village. The relevant paragraphs of the judgment referred to herein above are extracted here in below;

"61. Even if we assume that absconding by itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused because it is not unknown that even innocent persons may run away for fear of being falsely involved in criminal cases, but in the present case, in view of the circumstances which we have discussed in this judgment and which have been established by the prosecution, it is clear that absconding of the accused not only goes with the hypothesis of guilt of the accused but also points a definite finger towards them.

62. This Court in the case of *Rabindra Kumar Pal @ Dara Singh v. Republic of India* (2011) 2 SCC 490), held as under:

"88. The other circumstance urged by the prosecution was that A-3 absconded soon after the incident and avoided arrest and this abscondence being a conduct under Section 8 of the Evidence Act, 1872 should be taken into consideration along with other evidence to prove his guilt. The fact remains that he was not available for quite some time till he was arrested which fact has not been disputed by the defence counsel. We are satisfied that before accepting the contents of the two letters and the evidence of PW 23, the trial Judge afforded him the required opportunity and followed the procedure which was rightly accepted by the High Court."

63. Then it was also contended that circumstantial evidence is a very weak evidence and in the present case, the complete chain having not been established, the accused are entitled to acquittal. This argument again does not impress us. Firstly, we have discussed in some details that this is not purely a case of circumstantial evidence. There are eye-witnesses who had seen the scuffling between the deceased and the accused and the strangulation of the deceased by the accused persons and also the loading of the mutilated body parts of the deceased contained in gunny bags into Maruti Van. Evidence establishing the 'last seen together' theory and the fact that after altercation and strangulation of the deceased which was witnessed by PW8, PW17 and PW19, the body of the deceased was recovered in pieces in presence of the witnesses, have been fully established. To a very limited extent, it is a case of circumstantial evidence and the prosecution has proved the complete chain of events. The gap between the time when the accused persons were last seen with the deceased and the discovery of his mutilated body is quite small and the possible inference would be that the accused are responsible for commission of the murder of the deceased. Once the last seen theory comes into play, the onus was on the accused to explain as to what happened to the deceased after they were together seen alive. The accused persons have failed to render any reasonable/plausible explanation in this regard.

16. That, so far the injuries on the person of the deceased are concerned, the Appellant has not been given any explanation whatsoever. The statement of the Appellant under Section 313 of the Cr.P.C. is that a simple denial of the occurrence. On the contrary, there is strong evidence coming forth from the

prosecution side that the deceased was last seen together with the Appellant. Moreover, the medical evidence reveals that the injuries were ante mortem and the timing as indicated in the post-mortem report perfectly fits into the prosecution case regarding the time of occurrence which is near about the time by which both Appellant and the deceased were seen together. In view of which evidence, a heavy onus lies on the Appellant to give a plausible explanation as to what happened to the deceased after they last seen together and how the deceased sustained six injuries on his person. No such explanation has been given by the Appellant. Such failure on the part of the Appellant compels us to construe the same to be a incriminating circumstance against the Appellant. Therefore, the trial court has rightly relied upon a judgment of Hon'ble Supreme Court of India in Mani Kumar Thapa vrs. State of Sikkim; reported in (2002) 7 SCC 157, wherein the Hon'ble Supreme Court has held where the accused failed to explain the circumstances established by the prosecution against him, it would form additional link in the chain of circumstances.

17. The next ground on which the learned counsel for the Appellant seeks to assail the judgment of the learned trial court is, lack of motive in the present crime and argued that motive has not been established by the prosecution in this case for commission of the murder by the Appellant. In this regard, it is pertinent to refer to the evidence of P.W.7 Padmini Kissan. In paragraph-3 of her examination-in-chief she has stated as follows:-

"My husband was a sorcerer. Before the occurrence the accused was calling my husband to treat his ailing father but he did not recover."

Nothing substantial could be elicited by the defence during her cross-examination to disbelieve that piece of evidence of P.W.7. It appears from the evidence of P.W.7 that the deceased was treating the ailing father of the Appellant, who eventually could not recover and succumbed to the diseases he was suffering. Moreover, law is well settled that, in any criminal trial motive need not be established by the prosecution. In this context, Mr. Katakia places his reliance on a judgment of the Hon'ble Supreme Court of India in State of Himachal Pradesh vrs. Jeet Singh; reported in (1999) 4 SCC 370, and in paragraph-33 of the judgment the Hon'ble Supreme Court has held as follows:-

"33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. In this context we may extract the observations made by a two Judge Bench of this Court (Dr. A.S. Anand, J, as

the learned Chief Justice then was and Thomas, J) in *Nathuni Yadav v. State of Bihar* (1998) 9 SCC 238, P 244, Para 17)

"17. Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Campbell struck a note of caution in *R.V. Palmer* (Shorthand Report at p. 308 CCC May 1856) thus:

"But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties."

Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant."

18. Upon detailed and careful analysis of both oral as well as documentary evidence on record, we have no hesitation to hold that the appellant is the author of the crime and there exists no other evidence whatsoever to take a different view than the conclusion arrived at by the learned trial court in the present case. The circumstantial evidence, medical evidence, last seen together, recovery of weapon of offence and the conduct of the appellant in absconding from the village immediately after the occurrence coupled with the fact that the defence has not given any explanation

as to what happened after the appellant and the deceased were last seen together, compels us to believe and accept the findings arrived at by the learned trial court.

19. For the reasons afore stated, we see no reason to interfere with the judgment of the learned trial court either on merits or on the quantum of sentence. Therefore, the appeal is dismissed. There shall be no order as to cost.

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