
(2017) 04 RAJ CK 0044
In the Rajasthan High Court
Case No : 124 of 2007

Bheru Singh S/o Kan Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 174](#), [Section 176](#), [Section 437A](#) - Power to examine the accused - Police to enquire and report o

Citation : (2017) 04 RAJ CK 0044

Hon'ble Judges : Gopal Krishan Vyas, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : Vineet Jain, C.S. Ojha

Final Decision : Allowed

Judgement

1. The instant appeal has been filed against the judgment dated 17.1.2007 passed by learned Additional Sessions Judge (Fast Track) No.2, Pali in Sessions Case No.31/2006, by which the learned trial trial Court has convicted the accused-appellant under Section 302 I.P.C. for life imprisonment with a fine of Rs.1000/- and in default further to undergo three years simple imprisonment and under Section 201 I.P.C. for seven years imprisonment and with a fine of Rs.500, in default, further to undergo one year's simple imprisonment.
2. The allegations as mentioned in the FIR goes to reveal as under:-

"VERNACULAR MATTER OMITTED"

3. Heard submission of both the sides, placing reliance on the judgment of Hon"ble Supreme Court as rendered in Inspector of Police, Tamil Nadu Vs. Palanisamy alias Selvan, (2009) 2 SCC (Cri) 844, learned counsel for the appellant has contended that the trial court has committed material illegality and perversity in passing the impugned judgment and has faulted in arriving at conclusion of guilt, there was no direct evidence, the case of the prosecution is based on circumstantial evidence and the links relating thereto have not been properly connected, majority of the witnesses of prosecution have become hostile. "PW-2 Amba Lal" is not a trustworthy witness, since theory of extra judicial confession, which has been invented through this witness does not substantiate being contradictory and baseless,. there are important contradictions in testimony of this witness, he has himself controverted several say of police statements, he has twice been testified, Amba Lal as well as Gopal were actually involved in crime since both were detained by the police authorities and they were interrogated under custodial predicament, which goes to show that there was intense propensity of doubt and involvement of both these witnesses in the crime and without any reason the appellant was framed. Because of no offence and unnatural burnt death under the provisions of Section 174 / 176 of Cr.P.C. Proceedings for morgue were conducted by Executive Magistrate and after concocting fable, false report was lodged belatedly without any legal ground. Learned counsel has further contended that appellant-accused was illegally detained by the police authorities prior to the alleged arrest memo, which is very much apparent from the record and Ex.P.1, which has got interpolation of dates

and overwriting, which too is admitted by the prosecution and this goes to reveal that fabrication of record was malafidely prepared to involve innocent appellant.

Entire evidence goes to show that deceased Payal was a poor girl, her father was serving sentence for murder, even the marriage expenditures were borne by the accused himself, so allegation regarding any demand automatically negates, and nullified, the recovery is also not established, alleged dictum of extra judicial confession says that the deceased was strangled whereas a knife by which alleged stains of wall, stated to have been scratched and wiped away, has been recovered without authenticity of any recovery witness. It has further been contended that cause of death has also not been established and story of the prosecution suggest that the accused had left the place after handing over key of his house to neighbour Gopal, who too has accepted this version in his testimony being PW 4, alleged disclosure of extra judicial confession becomes wrong because Amba Lal has himself said that when he visited at the house of the accused, then "Payal" was not there and contrary to it alleged story has been brought with the allegations, as if, that burnt dead body of deceased "Payal" was inside the room, which is quite contrary and unnatural. The post-mortem report and report of viscera does not reveal cause of death of the deceased and all these go to divulge that prosecution has miserably failed in establishing its case and the impugned judgment is not sustainable at all, so it be set aside after allowing the appeal.

Learned Public Prosecutor has contended that the prosecution has proved its case, beyond all reasonable doubts, there were strained relation between the couple and accused was repeatedly demanding dowry, which has properly been conveyed

by all the witnesses of the prosecution. Body of the deceased was found in the premises of the accused, recovery of weapon has also been made on his information, the accused has eliminated his wife within a year of marriage, testimony of prosecution is reliable and there is no error in the findings of learned trial court. The appeal does not weigh any merit, so it be dismissed.

4. Perusal and analysis of the record reveals

that Ex.P.11 post mortem report does not disclose cause of death of deceased Payal, several parts of the body were also short, while the body was examined by the Medical Board at Jodhpur, some parts of the body were separate and it has been opined that the body was of female of 20 to 22 years, died between 2-5 days from the time of post mortem examination, cause of death could not be ascertained at the time of post mortem, however, final opinion will be given after receiving viscera report, this post mortem has been conducted on 23.3.2006 at 6:15 PM. It is also mentioned in the report that the dead body was brought by the police from Pali for re-examination, body was extensively burnt with exposed bones, skull lying separately, few bones, also found loose, chest, abdominal cavities found opened.

5. Ex.31 which is a photocopy of an application containing report of Pali Medical Board regarding first post mortem report its overleaf reads that in the opinion of Medical Board, cause of death, duration, nature of burn, ante mortem or post mortem burnt (sic) could not ascertained, however, piece of bones, ashes, flesh has been taken and sent to higher center along with whole body (sic) to police for further evaluation but it is strange that this aspect has not properly been proved during trial. Exhibit 31

which is a faded photo copy and which is not properly legible has been filed by the Investigating Officer, PW18 Sanjay Gupta during the course of testimony, which has got a reference in his testimony, as well. Ex.30 FLS report, which belongs to viscera does also not disclose detection of poison or metallic poisons, ethyl and methyl alcohol, cyanide, alkaloids, barbiturates, tranquilizers and insecticides.

6. Upon aforesaid, it is obvious that the cause of death of the deceased has not been ascertained, the body of the deceased was post mortemed twice, so far as the first post mortem report is concerned, it has not been proved in the Court nor Doctors conducting the first post mortem at Pali, have been produced in the Court, whereas the first post mortem report, which was conducted at Pali has also opined that cause of death could not be ascertained there, even few parts of the body were taken for further examination there but what occurred to those samples of the body has not been revealed by the prosecution in their evidence, which is astonishing.

7. PW9 Dr. P.C. Vyas, who conducted re-examination of dead body at Jodhpur has said that on 23.3.2006, he had conducted post mortem of Payal W/o Bheru aged 20 years, body of which was identified by police officials, Amra Ram and brother of the deceased Vikram Singh. He has said that death occurred about 2 to 5 days prior to the post mortem and the body was brought for re-examination from Pali. He has also said that Ex.P.11 post mortem report is in his hand writing and has further said that "cause of death could not be ascertained by post mortem" and has said that he had got experience of 22 years and had conducted thousands of post-mortems.

8. PW 18 Sanjay Gupta, C.I.-cum-Investigator of this matter has also accepted in his testimony that post mortem is Ex.11 and FSL is Ex.30 and opinion of Pali Doctor is Ex.31 and on the basis of these three "cause of death could not be ascertained", there is no opinion regarding strangulation, the body was found in burnt position as a skeleton, he has also said that Pali Medical Board report is not on the record and has said that he had brought photo copy of it, which is as Ex.31.

9. Ex.P.2 is a report pertaining to morgue, which has been given by "Gopal", a neighbour and "Richi" sister of the deceased. On 23.3.2006 at 7:30 AM, on which morgue No.4 under Section 176 Cr.P.C. was registered. It does not contain any allegations against the accused and reads as under:-

"VERNACULAR MATTER OMITTED"

10. It also goes to indicate that on 22.3.2006 Gopal had returned from his work at 5 to 6. Bheru was there at his home at about 8 PM, he parked his cycle in his house, Bheru was alone at home, his wife was not there, later on 8:30 PM, Bheru came to the room of Gopal and consigned key of his house by saying that he may take his cycle, since he was going to Jodhpur and when he awakened in the night at 4 to 5 in the morning then he found, smoke emanating from the house of Bheru Singh, Tej Singh and his wife also got awakened, slight fire was blazing in the house of Bheru and smoke was coming out, Tej Singh called Fire Brigade, which extinguished fire and they saw a dead body of burnt lady, probably of Payal there, subsequently on enquiry/inquest of SDM Ex.P.17 was presented by SDM before the Police Thana, Industrial Area, Pali on 25.3.2005 at 7:30 PM and a case under Section 304B and 201 I.P.C. was registered and chalk FIR was lodged by the police vide Exhibit 18.

11. Arrest-memo of accused shows that variation and interpolation is there in the "date of arrest" and visible overwriting is there, which goes to show that "25" appears to be over written as "26" and against column P.S. Thana efgyk is "struck" and this manifest interpolation in column of "date" is established by the evidence of PW 1 Mangi Lal, who has said that memo of arrest Ex.1 contains his signatures from "A" to "B" and he has said that the accused was arrested on 25.3.2006 in the morning at about 10-11 and he has said that his signatures were taken at 10:00 in the morning and not in the night and he has further said that he remembers the date of arrest was 25.3.2006 and has denied that Ex.P.1 was not prepared as per the details mentioned therein, which is enough to show that the entire theory of arrest and proceedings pertaining to alleged recovery thereafter collapses.

12. PW18 Sanjay Gupta, I.O. has also accepted in his testimony that exhibit-1 contains overwriting from "X" to "Y" (which is an entry relating to "date" and "time"), he has also said that ink is spread at "Z".

13. "Amba Lal" and "Gopal" are witnesses of the prosecution who were detained for custodial interrogation and this version has been accepted by both these witnesses that they were being called in the morning and were being let off in the evening and were interrogated by the police authorities. "Amba Lal" has said that on date 23rd, he had gone to police station at 2:00 PM, his statements were recorded on that day and police had asked about whereabouts of Bheru Lal, he has further said that next day again at 7:00 AM, he was called and went to Thana and remained there for whole day. He has further said that on 24 th Sahab came in the evening and he ordered to release him. He has

specifically admitted that "it is correct", he and Gopal were detained in Thana for two days in connection with murder of Payal and has said that he was being summoned daily in the morning and was let off in the evening.

14. PW1 Amba Lal has said that on 22.3.2006, Bheru came to him and they went together to the house, when he was going to his home, Bheru asked him to go along to his home. Then, "Bheru informed him at the gate of his house that he had killed Payal by strangulation and asked him how to dispose of the body and had sought his advise, then he said "thou have committed wrong, may misfortune fall upon thee".

He has again said that prior to it, Bheru had said that he would kill Payal and has said that after this, he left for his home, which too is unreliable. He has also said that he had participated in the marriage of Bheru Singh. Roshni and Shyam Lal had performed role of Bride's parents. He has also said that there was no transaction or dowry, expenses of marriage were also borne by Bheru Singh. He has also said that Bhanwari was a married lady and she had got her own husband and her own family and they live there. He has contradicted several parts of exhibit 1 and 2 and has contradicted some parts of exhibit 2 regarding alleged scuffle of Bhanwari, Bheru and Payal and has said that on 22 he had gone to the house of Bheru Singh at 6:00. He has further said that he sat there for two minutes and talked with Bheru but no dead body was seen by him in the room nor blood spots were seen, on the wall, on one hand this witness says that, he was informed by Bheru Singh that he had killed his wife but while sitting there, he did not find any dead body nor he witnessed any signs of

blood or dead body there, whereas Ex.2 shows that at 8 PM he had kept his cycle in the house of Bheru Singh and then Bheru Singh was alone in the house and his wife was not there and at 8:30 PM, Bheru Singh handed over key of his house to him to facilitate keeping of his cycle there, both these facts indicate that on 22.3.2006, "Gopal" as well as "Amba Lal" came to Bheru Singh's house and no such body was there, so, utterances of extra judicial confession of Amba Lal are non-corroborative and unreliable.

15. Amba Lal has also said that he did not inform this while recording Ex.D.1 and D.2 with respect to say of Bheru Singh, as earlier narrated him for some times that he would kill Payal, which also goes to suggest that vitals were concealed by him or nothing of that nature was informed to him by Bheru, which diminishes value of his evidence.

This witness "Amba Lal" has also said that he visited at the house of Bheru Singh, his wife Payal use or wear and use veil (parda) and it has also come in his evidence that she worked with them, when both were engaged in house construction. Amba Lal was known of Richa, sister of deceased, so testimony of this witness is illusive, contradictory and at several occasions, he has narrated unreliaables, so far as utterances of extra judicial confession are concerned that too appears to be cloudy and unrealistic.

16. PW3 Vikram Singh brother of deceased Payal has also uttered several contradictory and non-believable says, as he has said that he is not aware that with whom Payal had married for the first time and is not aware on which date, marriage of Payal was ceremonised with Bheru Singh because he was not present at the time of marriage and

has further said that Bheru Singh had made all expenses of marriage and has also said that he had come to Pali after one year of marriage of Bheru Singh and Payal and stayed with Richa and did not visited to the house of Bheru Singh, whereas the FIR reveals that marriage of Bheru Singh and Payal had taken place 8 to 9 months before. He has also contradicted some parts of Ex.P.3 and P.4 and has uttered some improvements. He and his sister Richa have further said that they did not inform police regarding demand of dowry inferring that "Bheriya" had committed suicide by burning himself, this witness has also accepted that his father was serving sentence in connection with some murder in central jail.

17. PW4 Gopal has turned hostile. He has accepted his signatures on Ex.P.2 to 7 and has said that "Payal" had married with Bheru Singh 8 to 10 months, prior to the occurrence and has said that when Bheru went to Jodhpur, he had given key of his house to him to facilitate parking of cycle and has said that in what way couple Bheru Singh and Payal resided is not known to him. He has further said that Ex.P.2 was written by police and his signatures were taken and he does not know what is written in Exh.P.3, 4, 5, 6 and 7. He did not read nor those were read over to him. He was asked to sign, so he signed. He has further said that Bheru Singh lives there with affection without any struggle with anybody and he never seen Bhanwari coming over to the house of Bheru Singh. He has further said that fire brigade people and police men were trying to break open the door, so he had given key of the house to them and has said that when they came, he and Tej Singh opened the house lock by key. He has narrated an important fact that "when he kept his cycle then Payal was not present there". Bheru Singh has informed him

regarding her visit to Jodhpur. He has further said that Bheru Singh and Payal used to live with affection and Bheru Singh was amicable with neighbours and was living comfortably with them.

18. PW5 Naresh, neighbour, has also become hostile and has accepted his signatures on Ex.P.5, 7 and 9 though he is a recovery witness of dagger but he has said that Bheru Singh had given a knife to police, mode of information and consequent to it, alleged knife has not properly been recovered. He has further said that Ex.P.9 was not read over to him and has said that knife was recovered next day to the Payal's tragedy, fact reveals that the incident happened on 22/23.3.2006, whereas recovery of the knife is of 27.3.2006 vide Ex.P.9 and as per the aforesaid say of this witness, the recovery gets falsified and he has further said that the alleged knife was shown in the thana and it was taken into writing vide Ex.P.9, whole of the evidence of this witness makes the recovery untrustworthy. Moreover, cause of death of deceased Payal has also not been ascertained. According to alleged extra judicial confession the death is said to be by strangulation, which has proved non-reliable, whereas knife is stated to be used in wiping the blood spots from walls but eye witnesses have also said that no blood stains were found by them in the room. On totality, of the above evidence alleged recovery of knife is of no use.

19. PW6 Kalu Singh has also turned hostile and he has said that Payal and Bheru Singh used to live together peacefully and he did not witness any dispute between them nor heard anything alike. He has denied his statements of Ex.P.10 and has said that he did not inform police anything alike, in his cross-examination, he has said that Bheru Singh is a simple area inhabitant, having no dispute with anybody and nurturing good

relations with area people, he has further said that at the time of blaze, official vehicle came, they asked key from Gopal, then opened the house. He has also said that he did not know, whether any divorce took place between Bheru and his first wife Kamla. With respect to expenditure of marriage, this witness has also said that the marriage expenses were made by Bheru Singh, he has also said that what formalities were completed by the police, is not known to him nor those were read over to him and he did not watch any illicit relations between Bhanwari and Bheru Singh.

20. PW7 Tej Singh is also a neighbour, who informed and called fire brigade on detecting blaze, he has also said that Payal and Bheru had married 8 to 9 months, prior to the incident, five months back, his wife had informed regarding the inferno at 5 in the morning after awakening him, on observing smoke, he telephoned to fire brigade. Fire brigade came, house was locked, Gopal had also arisen and he informed that the keys were with him, Gopal opened the house by that key, fire brigade doused water and extinguished, the fire, on witnessing inside a burnt skeleton was found there. All area people drew an idea that the skeleton was of Payal, in his cross-examination, he has also said that the marriage expenses were borne by Bheru Singh and marriage was dowryless and he did not hear anything adverse against Bheru Singh, in connection with dowry demand.

21. He has uttered an important fact that soon as Gopal opened the door of Bheru Singh's house, flames emanated, fire brigade doused water forcefully, flames were intense, there was thick smoke around, he has further said that at the time when Ex.P.2 was written by him, "Gopal" and "Richi" were there. He has further said that "Richi" and his brother Vikram were also there

and both did not inform anything like annoyance of Payal by Bheru Singh.

22. PW. 8 Richa sister of deceased, who also resides in the nearby place of deceased's house, has said that at 4 to 5 a.m. about 5 months back, Tej Singh knocked at her door and informed about the fire at Payal's home, she went to the house of Payal, Fire Brigade people came there, then the house door was opened, she has further said that after marriage, relations of Payal and Bheru Singh remained comfortable for some time, Bheru used to go to the house of Bhawnari. Payal forbade, which was a reason of struggle, in her cross-examination, she has said that she had signed Ex.P. 2 (the morgue report) after reading it and has said that she did not inform anything pertaining to dowry demand or harassment by Bheru Singh, on advice of neighbour, but she has said that she do not know the names of those persons, who advised alike, she has further said that Bheru Singh had asked him at the time of marriage that convey your caste as "Rajput" so, she had conveyed her caste as "Rajput" in Ex.P. 6 and 7, she has further said that she used to inform her caste as "Sardar" and her sister's as "Rajput". Surprisingly at the time of "taking-down" of her testimony, she has informed her caste as "Darzi", which goes to reveal that this witness is less trustworthy and is accustomed to "speak false". She has further said that earlier Payal was married with a "Darzi" in Sadri, her mother-in-law was bad, so the marriage was abandoned though divorce was not there, she has further said that pertaining to alleged harassment of Payal by her mother-in-law, case was not lodged, she has also said that her father is convicted for triple murder. She has also said that the expenditure of marriage of Bheru Singh and Payal was made by Bheru Singh, since she had said that they have got

no money, she has further said that the role of bride's parents, at the time of Payal's marriage was performed by Roshni and her husband.

She has again said that Payal had informed her, that reason of dispute was because of Bhanwari and not for any other reason, she has further said that she did not complain to Bhanwari or her mother and her husband regarding alleged illicit relations, she has further accepted that Ex.P. 6 and 2 does not mention fact relating to "Information of Payal that Bheru Singh's visit to Bhanwari's house was reason of their dispute".

23. Entire evaluation and examination of testimony of this witness reveals that she is just a hearsay and Ex.P.2, which was the first information regarding the unfortunate does not reveal any allegation or incriminating facts pertaining to demand of dowry, alleged illicit relations with Bhanwari, strained relationship of couple or anything otherwise, which is suggestive that prosecution has invented certain neo facts through improvements, which are not reliable at all.

24. PW.10 Shanti a labour, who worked alongwith the couple and Bhanwari has turned "hostile" and she has said that she did not witness Bheru Singh beating his wife Payal and has denied Ex.P.12's utterances.

25. PW.11 Roshni Yadav is also an important witness since this lady has ceremonized marriage of Payal with Bheru Singh being mother of Payal and her husband has also ceremonized the marriage as parents of bride Payal. She has said that "Kanyadan" of payal was performed by her and her husband, her marriage was performed on 16.7.2005. All the expenditure of marriage

was made by Bheru Singh, he did not demand any dowry in marriage and no transaction took place because Bheru Singh was aware that Payal's family was not competent. She has further said that on "Deepawali", both Bheru Singh and Payal had visited to her house and couple was happy. She has further said that Payal never informed her regarding any demand of dowry by Bheru Singh or his alleged illicit relations.

PW12 Kamla has also turned hostile and has denied her police statement Ex.P.13.

PW13 Om Prakash is a Police Constable. He has said that on 27.4.2006, Police Constable Jagdish Kumar brought two sealed packets pertaining to case No.29/2006 of Police Station Mahila Thana, Pali and deposited the same, he prepared Ex.P.14 forwarding letter and gave it to Jagdish Kumar, who deposited the sample on 28.4.2006 in Jodhpur and submitted copy of its deposit receipt. He has confirmed Ex.P.14, 15 and 17 and has said that during his custody the sample remained sealed and secure, he has further said that articles were packed in white cloth bag but he did not open the bag.

PW14 Mohan Singh Ratnu, Station House Officer has said that he has lodged case No.29/2006 under Section 304B, 201 of I.P.C. and investigation was handed over to C.I. Pali. He has further said that FIR is Ex.17 which contains his endorsement and his signatures its chalk FIR is Ex.P.18, which also contains his signatures, he has further said that after completion of investigation, he had filed charge-sheet in the Court. He has also said that it is mentioned in the post-mortem report that the "cause of death will be ascertained after receipt of FSL report and by the time of filing the charge-

sheet, F.S.L. was not received".

PW15 Kuna Ram is a Constable Photographer, who has said that he had clicked photographs on 23.3.2006 which are Ex.P.19A to P.27A and its negatives are Ex.P.19 to P.27.

26. PW16 Jagdish Kumar is a Constable, who has said that two sealed packets of a glass bottle (jaar) were given to him on 27.4.2006 per road No.16/27.4.2006 for depositing in FSL. Constable Om Prakash received them and after getting Exhibit 14 forwarding letter from S.P. Office, he deposited the samples on 28.4.2006 and obtained Ex.P.16 its receipt and deposited the same with C.O. Office and its copy to S.P. Office. Contrary to the statement of PW13 Om Prakash, this witness has said that the glass (Jaar) were not packed in cloth bag, which is a manifest flaw.

27. PW17 O.P. Jain, SDM, who has conducted morgue inquest has confirmed Ex.P.2 and P.3, P.4, P.5 and P.6. He has further said that by a team of, Medical Board Members, post mortem was conducted on the spot, but the post mortem board failed to conclude opinion regarding cause of death, so, on their advise, post-mortem of the deceased was further got conducted in Mahatma Gandhi Hospital, Jodhpur in his cross-examination, he has said that had there been any kerosene container, then it would have been mentioned in spot-memo. He has further said that the morgue report was signed by "Richi", sister of deceased and "Gopal" neighbour.

28. He has further made a significant say that on the date of 23rd "Gopal" had stated that "Bheru Singh" had given him key of his house at 8 to half past 8 on 22.3.2006 after saying that he was going to Jodhpur and it

is correct that "Gopal" and "Tej Singh" had stated that key of Bheru Singh's house was with "Gopal" through which the door was opened and fire was extinguished.

He has also stated that according to Ex.P.2 when "Gopal" kept his cycle in the house of "Bheru Singh", then Bheru Singh was there in his house and his wife was not there, he has also said that during his enquiry nobody informed that when Bheru Singh consigned key of his house on 22nd to Gopal, till morning of 23rd, he was not seen there. He has accepted that there is no mentioning of dual keys in Ex.P.17. He too has said that Medical Board, Pali failed to advise cause of death and Jodhpur Medical Board did not reveal cause of death and has said that it was said that it will be advised after FSL report of viscera.

29. PW18 Sanjay Gupta, a Circle Officer-cum-I.O., has narrated the mode and methodology of investigation, he has specifically admitted that Pali Medical Board did not ascertain cause of death, likewise Medical Board of Jodhpur also failed to ascertain it. He has admitted that the body was in worst condition, so six Doctors failed to ascertain cause of death. He has also said that he had investigated and inquired with Bhanwari but did not record her statements, he has also said that witnesses Shanti, Sayara Bai, Sangram Singh, S.I., stated in their submissions that Bheru Singh and Bhanwari had no illicit relations and such were rumours there was some rupee transaction between them.

30. Accused Bheru Singh has denied all the interrogatories put to him under Section 313 Cr.P.C . and has explained elaborately that he was away to Jodhpur, after giving home key to "Gopal" and his wife did not return by the evening of

22nd, he never demanded dowry or harassed her and refuted all relations of illicit relations with Bhanwari and has said that "Amba Lal" and "Gopal" framed him after hatching a conspiracy.

31. Upon advertent and evaluating the entire evidence as discussed earlier, we feel that the prosecution has, failed to produce any positive evidence to prove its case.

F.S.L./viscera report does not divulge administration of poisonous substance, surprisingly, first post-mortem report has not been proved nor it has been produced according to the provisions of law. I.O. has just made a reference of it, which is an illegible photo copy, which too suggests that certain parts of the body were sent for further examination, but Doctors conducting the first post-mortem report, have not been produced in the evidence. So far as, subsequent post-mortem is concerned, that too has not revealed cause of the death. The Investigating Officer, as well as, Doctor PW 9 Dr. P.C. Vyas have also accepted this aspect that the cause of death of deceased Payal could not be ascertained.

32. Majority of the witnesses of the prosecution have turned hostile and have not supported, the story of prosecution, even recovery has remained unfruitful. Entire story of the prosecution suggests that Bheru Singh had handed over key of his house to a neighbour "Gopal" in order to facilitate him to keep his cycle there, the witnesses of the prosecution namely "Amba Lal" and "Gopal", who had been to the house of Bheru Lal on 22 nd in the evening, have explicitly asserted that Bheru Lal was alone at his home and Payal was not there.

33. Dicta of extra-judicial confession which has been revealed by Amba Lal is of no value, being untrustworthy and

invented. Amba Lal has contradicted several of his police statements. He has remained close in touch with Richa sister-in-law of Bheru Singh and sister of the deceased. As per his own say, he as well as Gopal were interrogated coercively under custodial way for days together, so probability of invention of such theory cannot be ruled out, the day on which alleged extra judicial confession of killing Payal was made, no such body of deceased Payal was witnessed in the house of Bheru Singh,. Death has been said to be caused by strangulation but no such opinion is there in the post mortem report, contrary to it recovery of a knife is shown but witnesses have said that they did not find Any blood stains on the walls, so alleged wiping thereof through knife also becomes futile. Moreover recovery of knife has also not been proved.

34. It has been averred by majority of the witnesses even the couple ceremonizing "kanyadan" of deceased Payal, that no dowry was there in the marriage, even family members of deceased Payal have asserted that entire expenditure of marriage was borne by Bheru Singh. It has also come in the evidence that Payal, as well as, Bheru Singh both were married earlier and had ceremonised second marriage without annulling their first marriage. Father of deceased was serving sentence in connection with triple murder. It has also come in the evidence that Payal remained engaged with Amba Lal and Bheru Singh with Bhanwari in connection with some labour for construction. Smt. Roshni Yadav PW11, who performed "kanyadan" of Payal has also said that the couple was living peacefully and there was no discontents, they had been to her house on last Deepawali and were happy.

35. Tej Singh and Gopal, neighbours of area have explicitly said that on arrival of police authorities and fire brigade,

house door of Bheru Singh was opened, after obtaining key from Gopal. It has also emerged that soon as the lock and door were opened, flames emanated, so nothing abnormal or tangible has emerged, so, involvement of Bheru Singh is not proved. Even cause of death of the deceased has not been established.

36. Obviously, it is a failure on the part of the prosecution, in this era of scientific advancement, failure in establishing the cause of death, despite presence of body, its remains and even in presence of burnt skeleton, appears to be astonishing and unbelievable, which shows that no diligent and sincere endeavours have been made to prosecute the trial in a true spirit.

37. In Varun Choudhary Vs. State of Rajasthan, 2011 CrL.L.J. 675, it has been held that where chain of events is doubtful, no conviction can be based and it is settled legal proposition that in a case of circumstantial evidence there must be complete chain of events, which would lead to a conclusion that the accused was the only person, who could have committed the offence and none-else. In Musheer Khan alias Badsah Khan vs. State of Madhya Pradesh, (2010) 2 SCC 748 it has been observed that in cases of circumstantial evidence complete chain of circumstances must be looked and snapped or scattered links is not enough to convict.

In Jiten Besra v. State of West Bengal, (2010) 2 S.C.C. (Cr.) 438 and in Kamla Devi vs. State of Delhi, 2012 (2) J.C.C. 1457 (Delhi) the Hon"ble Supreme Court has observed that once it is found that circumstance could not point out towards guilt of accused, without any other inference being probable, the accused must get the

benefit of doubt.

38. In *Baijnath & Ors. vs. State of Madhya*

Pradesh, 2017 1 SCC 101, Hon"ble the Supreme Court has held that in the cases of deficiencies of proof, benefit would be available to the person charged and in *Narendra Singh & Another v. State of M.P .*, (2004) 10 SCC 699, the Hon"ble Apex Court has also held that in event of there being two possible views, one supporting the accused should be upheld and Hon"ble the Supreme Court has recognized presumption of innocence as a human right.

39. In *Padala Veera Reddy V. State of Andhra*

Pradesh, 1989 Supp. (2) SCC 706 the Hon"ble Supreme Court has observed that in matters of circumstantial evidence, the evidence must satisfy the following texts:-

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (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
- (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.

40. Upon taking into consideration, totality of facts, evidence and law as discussed above, it is manifest that the prosecution has miserably failed to establish its case against the accused beyond reasonable doubt and we, feel that findings of guilt against the appellant-accused are not sustainable and same are liable to be quashed.

Therefore, the appeal is allowed and the

impugned judgment is set aside and quashed as such, the accused is acquitted of the charges levelled under Section 302 and 201 of I.P.C . so, he be released forthwith, if his custody is not required, in any other case.

Keeping in view, however, the provisions of Section 437A Cr.P.C. the accused appellant is directed to forthwith furnish a personal bond in the sum of Rs.30,000/- and a surety bond in the like amount, before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against the judgment or for grant of leave, the appellant, on receipt of notice thereof, shall appear before Hon"ble the Supreme Court.

Record of the trial court be sent back immediately with copy of the judgment.