

(2014) 03 DEL CK 0050

In the Delhi High Court

Case No : Criminal Appeal 1345 of 2011

Mohd. Shahid Khan @ Raja

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157 159 313

Evidence Act, 1872 — Section 138 146

Penal Code, 1860 (IPC) — Section 302 34 376(2)(g) 499

Citation : (2014) 03 DEL CK 0050

Hon'ble Judges : Sunita Gupta, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : Rakhi Dubey, for the Appellant; Sunil Sharma, APP, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Gupta, J.—Challenge in this appeal is to the judgment dated 20th April, 2011 and order on sentence dated 2nd May, 2011 passed in Sessions Case No. 77/2009 in case FIR No. 109/2009, PS Kapashera whereby the appellant was held guilty of offence u/s. 302 IPC and was sentenced to undergo imprisonment for life and to pay Rs. 10,000/- as fine and in default of payment of fine, to further undergo SI for four months. Prosecution case emanates from the fact that on 17th May, 2009, on receipt of a call regarding murder of a male aged about 20-25 years at Gali No. 8, Kapashera near Govt. Garbage House, near White Flats, New Delhi, PW13, W Constable Sudesh filled the PCR form Ex. PW-13/A and flashed the message to Control Room. On receipt of message, PW-12, W Head Constable Saroj recorded DD No. 12A (Ex. PW-12/A) and entrusted the same to SI Sudan Singh. SI Sudan Singh along with Constable Lakhmi Chand went to Phirni Chowk, Opp. White Flats, near Govt. Dust Bin, Kapashera, New Delhi where he found a dead body of a young man lying on the slope near drain and the park. He informed the SHO who reached the spot. The dead body was having a cut mark on the right side of the neck. There were

injury marks on his head and right cheek. His private organ was cut from his body. The dead body was identified by his wife. Blood was lying on the left side of the dead body in the park. One paper cutting blade and one railway ticket from Shahbad to Patel Nagar was lying near the blood. SHO called the crime team. PW-3 ASI Khazan Singh, In-charge, Crime Team reached the spot along with his team. PW-5, Head Constable Rajeev took photographs Ex. PW-5/A-1 to PW-5/A-9 from different angles. After inspection of the site, ASI Khazan Singh gave his report Ex. PW3/A. A blade, railway ticket, blood stained grass and earth control were lifted from the spot and were seized vide different seizure memos. Rukka was sent to police station through Constable Dharam Veer on the basis of which FIR Ex. PW12/B was recorded by PW-12, W Head Constable Saroj. The dead body was sent to DDU Hospital for preservation through Constable Lakhmi Chand.

2. It is further the case of prosecution that on 18th May, 2009, Inspector Lakhender Singh along with one public person Mohd. Rustam went to S.N. Enterprises, 6/12, Shadipur Depot, Kirti Nagar where inquiries were made and it was revealed that PW15 Mohd. Rustam, deceased Mohd. Naushad, accused Mohd. Shahid Khan and Mohd. Irshad Alam were working in S.N. Enterprises as employees. Deceased Mohd. Naushad, being short tempered, used to abuse Mohd. Shahid Khan and Mohd. Irshad Alam. They further came to know that Mohd. Shahid Khan belonged to Jharkhand and Mohd. Irshad Alam belonged to Bihar and both of them would be leaving by train that evening. As such, the police officials along with Mohd. Rustam went to Old Delhi Railway Station. On the pointing out of Mohd. Rustam, accused Mohd. Shahid Khan and Mohd. Irshad Alam were arrested from an open area in front of a park opposite Old Delhi Railway Station. Mohd. Shahid Khan made a disclosure statement, Ex. PW-15/F and got recovered one blood stained broken blade with yellow handle and button generally used for cutting paper and leather, which was seized vide memo Ex. PW-14/A. Mohd. Irshad Alam also made a disclosure statement and got recovered his blood stained T. shirt from his tenanted house in village Kapashera.

3. On 19th May, 2009, inquest papers were prepared. Postmortem on the dead body of the deceased was conducted by PW2, Dr. Komal Singh and, thereafter, the dead body was handed over to the relatives of the deceased. After post-mortem, Dr. Komal Singh handed over two sealed parcels containing clothes of the deceased and blood gauge along with the sample seal which were taken into possession vide seizure memo Ex. PW-17/A. During the course of investigation, statement of witnesses were recorded. Exhibits were sent to FSL and after completing investigation, charge sheet was submitted against the accused Mohd. Shahid Khan whereas separate challan was filed against accused Mohd. Irshad Alam before Juvenile Justice Board.

4. In order to substantiate its case, prosecution in all examined 19 witnesses. All the incriminating evidence was put to the accused while recording his statement u/s 313 Cr.P.C. wherein he admitted that he along with Mohd. Irshad Alam,

Mohd. Rustam and deceased Mohd. Naushad used to work in a leather purse manufacturing factory named as S.N. Enterprises at 6/12, Kirti Nagar Industrial Area, New Delhi. He also admitted that he as well as Mohd. Irshad Alam were residing at Kapashera. It was also admitted that one Naseem was working as a contractor in the said factory. 35-36 workers were working under his supervision and he had divided those workers in sub-groups. However, he denied that deceased Mohd. Naushad was in his group which was headed by Mohd. Rustam. Rest of the case is one of denial simpliciter. According to him, he is innocent. He had a dispute with Mohd. Rustam on account of some payment, which was outstanding towards him. He did not pay the outstanding amount for three months and, as such, Mohd. Rustam got him falsely implicated in this case. According to him, he was lifted from his house on 17th May, 2009 and was taken to police station and kept in lockup. Thereafter, he was taken to a place where there were bushes. Police took out a knife from a box and asked him to hold it and then his photos were taken with mobile. He was falsely implicated in this case. He did not prefer to lead any defence evidence.

5. After meticulously examining the evidence led by the prosecution and the other material on record, vide impugned judgment, the appellant was held guilty and sentenced as mentioned above. The findings have been assailed by the appellant by filing the present appeal.

6. We have heard Ms. Rakhi Dubey, Amicus Curiae for the appellant and Sh. Sunil Sharma, learned Additional Public Prosecutor for the State/respondent.

7. It was submitted by learned counsel for the appellant that as per the prosecution, the appellant along with Mohd. Irshad Alam committed the murder of Mohd. Naushad on the intervening night of 16-17th May, 2009. However, as per the post-mortem report, time since death was 72 hours, meaning thereby, the death had taken place between 12:15 p.m. to 1:20 p.m. on 16th May, 2009. Moreover, as per the prosecution case, PW-15 Mohd. Rustam informed PW-1 Farzana in the morning that deceased was in the company of the appellant and JCL-Irshad Alam. Thereafter the dead body was recovered near Govt. Dust Bin and was identified by PW-1. However, PW-1 failed to inform the police regarding the factum of deceased being in the company of the accused persons. She simply informed the police that the deceased had gone to work in the morning a day before and had not returned. This shows falsity of the case against the appellant. It was further submitted that prosecution is heavily relying upon the testimony of Mohd. Rustam for proving the circumstances of last seen. However, the same is doubtful, firstly, in the light of the postmortem report, secondly the name of the accused person was not informed at the first instance, thirdly, testimony of PW-15 is contrary to testimony of PW-1 Farzana and PW-7 Naseem. PW-1, Farzana does not state that she had gone to search the deceased in the morning. Similarly, Naseem fails to state regarding the quarrel between the deceased and the accused prior to the incident. The case is based on circumstantial evidence. The chain of evidence is not so complete as to show that within all human

probability the act must have been done by the accused. The prosecution has failed to prove motive for commission of crime. As per the case of prosecution, the deceased used to abuse the accused persons who used to feel offended and also extended threat to the deceased, however, no complaint was filed in this regard. As per the post-mortem report, the deceased was strangled. Thereafter, the post-mortem injuries were also caused. It is hard to believe that any person would murder in such a brutal manner just because the deceased used abusive language. Moreover, the cause of death of the deceased was strangulation. However, prosecution failed to explain as to with which material, the strangulation was done. Prosecution had shown the recovery of a broken blade at the instance of the appellant from the bushes near the spot which was an open space accessible to all. The spot was duly inspected by the crime team when the dead body was recovered. Thus the recovery becomes doubtful. Under the circumstances, it was submitted that the prosecution has not been able to establish its case beyond reasonable doubt and the accused is entitled to be acquitted of the offence alleged against him.

8. Reliance was placed on Bhajan Singh @ Harbhajan Singh and Others Vs. State of Haryana, Bakhshish Singh v. State, 1971 SCC (Cri.) 251 Chander Pal Vs. State, Padala Veera Reddy Vs. State of Andhra Pradesh and others,

9. Per contra, it was submitted by learned Additional Public Prosecutor for the State that the impugned order does not suffer from any infirmity which calls for interference. Although the case is based on circumstantial evidence, however, all the links in the chain are complete to prove the complicity of the accused in the crime. Motive to commit crime stands proved from the testimony of PW-1 Farzana, wife of the deceased. Accused was last seen by PW-15 Mohd. Rustam. Accused also made an extra judicial confession before Mohd. Rustam. Subsequent to his arrest, he got recovered the remaining part of the blade and as per the report of the scientific officer, the blade of the paper cutting knife recovered at the instance of accused matched with other broken piece of blade recovered near the dead body. Human blood was also found on the blade of the paper cutter. Under the circumstances, it was submitted that the appeal is without any merit and the same is liable to be dismissed.

10. We have given our considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record.

11. It is an undisputed case of the parties that deceased Mohd. Naushad met a homicidal death. Post-mortem on the dead body of Mohd. Naushad was conducted by PW-2 Dr. Komal Singh who gave his report, Ex. PW2/A. As per the post mortem report, following were the observations and findings:-

External appearance: Both eyes closed, mouth open, congestion NAD, Cornea Hazy, nails bluish, hue (Cyanose), face and hair are embedded, covered with pieces of grass etc, bleeding from the mouth.

Ante-mortem External injuries:

1. Laceration of right ear at helix and pinna along the margin 3 cm x 2 mm, cut through.
2. Scratch marks on left side of the back, four in number, length varying from 5 to 7 cm, from gluteal region to scapular region.
3. Nail mark on inner surface of right arm 5 mm.
4. Dislocation of lower lateral incisors, clotted blood present along with gum contusion.
5. Comb shape imprint abrasion on left lateral side of neck 2.1 cm x 5 mm.
6. Ligature strangulation mark encircling the neck in circular fashion extending from left lateral surface of the neck coming towards the anterior side. Then on the right lateral side, on the right posterior hair line, there was gap of 1.3 cm. Total circumference of the neck was 31 cm. Ligature was 34 cm x 5 mm.
7. Abrasion over the ligature mark on the anterior surface. It was present over the thyroid cartilage going bilaterally towards the mastoid process and then to the posterior hair. It was 2 cm below the chin, 11 cm above the sternum, 7 cm from the left mastoid, 7 cm from the right mastoid.

Post-mortem injuries

8. Cut throat mark on the right anterior lateral of the neck size was 8 cm and 4 cm, muscle and vessels were cut through and through and there was no clotting of blood around.
9. Postmortem injuries on the penis, incised cut was given at the stem and there was no clotted blood.
10. Postmortem abrasion on the right sub scapular 2 cm x 1 cm.
11. There was cut incised wound of the left little finger, bone deep 3 cm x 2 cm.

Internal Examination:

Brain was congested and edematous. Lungs were also congested and edematous. Underneath surface of the neck has clotted blood and the clotted blood was present on the posterior surface of the cricoid cartilage. Froth was present in the lumen of the trachea. Other body organs were also congested. Stomach contained 150 ml of semi digested food.

It was opined that cause of death was asphyxia subsequent to ligature strangulation. Constricting force by the ligature was sufficient to kill the person in ordinary course of nature.

12. The core question for consideration is who was responsible for committing such a brutal murder. There is no eye-witness to the incident and the case of prosecution rests on circumstantial evidence.

13. The tests applicable to cases based on circumstantial evidence are fairly well-known. The decisions of Hon''ble Supreme Court recognising and applying those tests to varied fact situation are a legion. Reference to only some of the said decisions should, however, suffice.

14. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, Hon''ble Supreme Court declared that a case based on circumstantial evidence must satisfy, the following tests:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully 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.

15. In *V Aftab Ahmad Anasari Vs. State of Uttaranchal*, , it was observed:

13. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be.

16. To the same effect are the decisions rendered in *Bakhshish Singh (supra)*, *Chancier Pal (Supra)* and *Padala Veera Redely* relied upon by learned counsel for the appellant.

17. What, therefore, needs to be seen is whether the prosecution has established the incriminating circumstances upon which it places reliance and whether those circumstances constitute a chain so complete as not to leave any reasonable ground for the Appellant to be found innocent.

18. The circumstances which accounted for conviction of the appellant may be broadly categorised as under:-

- (i) Motive to eliminate the deceased
- (ii) The deceased being last seen with the appellant and JCL Irshad Alam
- (iii) Extra judicial confession made by the accused to PW15, Rustam
- (iv) Recovery of remaining part of weapon of offence at the instance of accused Mohd. Shahid
- (v) Scientific evidence.

19. We shall take each of the circumstance in seriatim-Motive

20. PW-1 Farzana, PW-6 Nagender Majhi, PW-7 Naseem and PW-15, Mohd. Rustam have consistently deposed that the deceased, Mohd. Naushad, accused Mohd. Shahid Khan, JCL Mohd. Irshad Alam and Mohd. Rustam were working in the same leather purse manufacturing unit, namely, S.N. Enterprises at Kirti Nagar. This fact is not even disputed by the accused in his statement u/s 313 Cr.P.C. It has further come in the evidence that the deceased Mohd. Naushad, accused Mohd. Shahid Khan, Mohd. Irshad Alam and Rustam were all working under the same contractor in S.N. Enterprises, Kirti Nagar. Naseem was the contractor who had divided the workers in sub-groups and one such sub-group was headed by deceased Mohd. Naushad and PW-15 Rustam and both the accused used to work in the said sub-group. Although, in his statement u/s 313 Cr.P.C., the accused has taken a plea that deceased was not working in their group, however, testimony of PW-7 Naseem in this regard was never challenged. No suggestion was given to him that deceased Mohd. Naushad was working in some other group or the group where the accused Mohd. Shahid Khan and Mohd. Irshad Alam were working, was headed by Rustam only. There is no motive attributed to PW-7 Naseem for allegedly making a false statement against the accused Mohd. Shahid Khan and Mohd. Irshad in this regard. He is a totally independent witness and no animosity, ill will or grudge has been alleged against him for which reason he will depose falsely in this regard. Under the circumstances, it stands proved that both the accused were working under the group which was headed by Rustam and the deceased.

21. PW1, Farzana, wife of the deceased has deposed that 15 days prior to the death of her husband, a quarrel had taken place between her husband and accused Mohd. Shahid Khan and Mohd. Irshad Alam and they hurled abuses on each other. After two days of this quarrel, accused Mohd. Shahid Khan made a telephone call to her on the STD booth and extended threat that he would kill her husband. She enquired from accused Mohd. Shahid Khan the reasons for administering such threat on which he replied that her husband gave filthy abuses to him. Next day, Mohd. Shahid Khan and Mohd. Irshad Alam came to her house at about 8:00 p.m. At that time, her husband was also present. Again the threat was repeated by both the accused and in pursuance to her query as to

why they wanted to kill her husband they replied that her husband was in the habit of giving filthy abuses. Her husband asked her to keep quiet and thereafter, he had some talk with both the accused. Then both of them left. PW-7 Naseem also corroborates her version by deposing that he had witnessed the quarrel between both the accused and deceased before his murder. Under the circumstances, it is established that the deceased used to abuse the accused due to which he was annoyed and had been extending threats to kill him.

22. It was submitted by learned counsel for the accused that the mere fact that the deceased used to hurl abuses on the accused persons cannot furnish sufficient ground for eliminating him.

23. We cannot forget that it is generally a difficult area for prosecution to bring on record as to what was in the mind of the accused/appellant and why he chose to act in a particular manner because it is not easy to read the human nature being what it is. A man's passion may arouse at any time even on a very trifling issue. The motive of a man is often so deep seated as to be almost unfathomable. He alone is having the knowledge of the feelings which he may be having against a particular person. On the other hand, there are persons who are so indolent and tolerant that they do not even react on much more serious incidents. Man's behaviour and reaction differ from person to person and by no scale is measurable. In today's time when patience run low and anger is aroused over a very trifling matter, it cannot be said with utmost certainty that the act such as hurling abuses could not have been sufficient enough to form a motive for commission of an offence.

24. Dealing with the aspect of motive, in *Subedar Tewari Vs. State of U.P. and Others*, , Hon"ble Supreme Court observed as under:-

The evidence regarding existence of motive which operates in the mind of an assassin is very often than (sic) not within the reach of others. The motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to the evil thought in the mind of the assassin.

25. Again reiterating the role played by motive in deciding as to whether the prosecution has proved the case beyond reasonable doubt against an accused, the Hon"ble Supreme Court in the case of *Suresh Chandra Bahri Vs. State of Bihar with Gurbachan Singh*, held as under:-

Sometimes motive plays an important role and become a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act with illegal means with a view to achieve that intention. In a case where there is motive, it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But the evidence bearing on the guilt of the accused nonetheless becomes untrustworthy or unreliable because most often it

is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime.

26. This view was reiterated in *Amitava Banerjee @ Amit @ Bappa Banerjee Vs. State of West Bengal*, where it was observed as under:-

41. Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty.

42. Absence of motive in a case depending entirely on circumstantial evidence is a factor that shall no doubt weigh in favour of the accused, but what the Courts need to remember is that motive is a matter which is primarily known to the accused and which the prosecution may at times find difficult to explain or establish by substantive evidence.

43. Human nature being what it is, it is often difficult to fathom the real motivation behind the commission of a crime. And yet experience about human nature, human conduct and the frailties of human mind has shown that inducements to crime have veered around to what Wills has in his book "Circumstantial Evidence" said:

The common inducements to crime are the desires of revenging some real or fancied wrong; of getting rid of rival or an obnoxious connection; of escaping from the pressure of pecuniary or other obligation or burden of obtaining plunder or other coveted object; or preserving reputation, either that of general character or the conventional reputation or profession or sex; or gratifying some other selfish or malignant passion.

27. It has come on record that the deceased was short tempered and since the accused persons were working under him they used to be reprimanded by the deceased quite on and off, and therefore, the accused persons were nurturing an ill-will and grudge against him. Even prior to the incident, they had threatened the deceased to kill him and had also telephonically threatened his wife to kill the deceased. The fact that the accused were so furious and annoyed and were nurturing such hatred towards the deceased is reflective from the post-mortem report which goes to show that even after strangulating the deceased, there were as many as four post-mortem injuries in the shape of cut throat mark on right anterior lateral of the neck, the penis was cut, there was abrasion on the right sub scapular and another cut incised wound on the left little finger. As such, motive to commit the crime stands proved not only from the ocular testimony of the prosecution witnesses but also from the medical evidence. Last seen

28. PW-15 Mohd. Rustam has deposed that on 16th May, 2009, he along with the deceased Mohd. Naushad, accused Mohd. Shahid Khan and Mohd. Irshad Alam had returned to Kapashera after finishing their duties and thereafter deceased was taken by accused Mohd. Shahid Khan and Mohd. Irshad Alam with them on the pretext of some party. This part of his testimony is not challenged in cross-examination. Rather in cross-examination, it was suggested to him that the programme of party on 16th May, 2009 was actually made by the accused Mohd. Shahid Khan, Mohd. Irshad Alam and Mohd. Naushad jointly, meaning thereby, that the factum of accused Mohd. Shahid, Mohd. Irshad Alam and deceased going for a party on that evening after working hours is not even denied by the accused. PW-15 further clarified that Mohd. Naushad had agreed to go with both the accused only after he was assured that expenses would be borne by them. Not only this, it was also suggested to the witness that he was making a false statement against the accused on being annoyed with him for not having invited to the party. This again corroborates the version of PW-15 that not only the accused Mohd. Shahid Khan and Mohd. Irshad Alam had lured the deceased of giving him a party on 16th May, 2009, but Rustam was not invited in the said party. There is no challenge to the testimony of this witness that the deceased was not taken by the accused persons with them on the pretext of giving him a party. Under the circumstances, it stands proved that accused Mohd. Shahid Khan and Mohd. Irshad Alam were the two persons in whose company the deceased was "lastly seen" alive.

29. Moreover, when this incriminating circumstance was put to the accused in his statement recorded u/s 313 Cr. P.C., he did not give any explanation except choosing the mode of denial. In *State of Maharashtra Vs. Suresh*, reiterated in *Jagroop Singh Vs. State of Punjab*, it has been held that when the attention of the accused is drawn to such circumstances that inculcate him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for completing the chain of circumstances. It was incumbent upon the appellant to explain when he parted with the company of deceased after he along with co-accused Mohd. Irshad Alam and deceased had gone for a party which he has failed to explain. As such, the circumstance of "last seen" together with the deceased is one of the incriminating piece of evidence against the accused. Mere fact that PW1, Farzana did not disclose this fact while identifying the dead body of her husband does not falsify the testimony of this witness which remains unassailed and unrebutted in cross-examination.

Extra judicial confession

30. It has come in the statement of PW-15 Mohd. Rustam that on the intervening night of 16-17th May, 2009 at 12:30 a.m., accused Mohd. Shahid Khan and Mohd. Irshad Alam came to his tenanted premises, woke him up and made an extra judicial confession that they had murdered Mohd. Naushad. However, he did not pay any attention to them and advised them to go home and sleep as

they were under the influence of liquor at that time. Next morning, when wife of deceased called him up stating that Mohd. Naushad had not returned home that night, he got suspicious and started searching for Mohd. Naushad. However, he being unsure did not reveal about the extra judicial confession made by accused persons to him to anyone. It was only after the dead body was recovered that he disclosed all the facts to the police which were recorded in his statement dated 17th May, 2009.

31. The evidentiary value of extra judicial confession came up for consideration before Hon"ble Supreme Court in R. Kuppusamy Vs. State Rep. by Inspector of Police, Ambeiligai, where it was observed:-

8. That a truthful extra judicial confession made voluntarily and without any inducement can be made a basis for recording a conviction against the person making the confessions was not disputed before us at the hearing. What was argued by Ms. Mahalakshmi Pavani, counsel appearing for the Appellant, was that an extra judicial confession being in its very nature an evidence of a weak type, the Courts would adopt a cautious approach while dealing with such evidence and record a conviction only if the extra judicial confession is, apart from being found truthful and voluntary, also corroborated by other evidence. There was, according to the learned Counsel, no such corroboration forthcoming in the present case which according to her was sufficient by itself to justify rejection of the confessional statement as a piece of evidence against the Appellant. Reliance, in support of the contention urged by the learned Counsel, was placed upon the decisions of this Court in Gura Singh Vs. The State of Rajasthan, and Sahadevan and another Vs. State of Tamil Nadu,

9. In Gura Singh's case (supra) a two-Judge Bench of this Court was also dealing with an extra judicial confession and the question whether the same could be made a basis for recording the conviction against the accused. This Court held that despite the inherent weakness of an extra judicial confession as a piece of evidence, the same cannot be ignored if it is otherwise shown to be voluntary and truthful. This Court also held that extra judicial confession cannot always be termed as tainted evidence and that corroboration of such evidence is required only as a measure of abundant caution. If the Court found the witness to whom confession was made to be trustworthy and that the confession was true and voluntary, a conviction can be founded on such evidence alone. More importantly, the Court declared that Courts cannot start with the presumption that extra judicial confession is always suspect or a weak type of evidence but it would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak about such a confession and whether the confession is voluntary and truthful.

10. In Sahadevan's case (supra) a two-Judge Bench of this Court comprehensively reviewed the case law on the subject and concluded that an extra judicial confession is an admissible piece of evidence capable of supporting the conviction of an accused provided the same is made voluntarily and is

otherwise found to be truthful. This Court also reiterated the principle that if an extra judicial confession is supported by a chain of cogent circumstances and is corroborated by other evidence, it acquires credibility. To the same effect are the decisions of this Court in *Balbir Singh and Another Vs. State of Punjab*, and *Jaspal Singh alias Pali and others Vs. State of Punjab*,

11. It is unnecessary, in the light of above pronouncements, to embark upon any further review of the decisions of this Court on the subject. The legal position is fairly well-settled that an extra judicial confession is capable of sustaining a conviction provided the same is not made under any inducement, is voluntary and truthful. Whether or not these attributes of an extra judicial confession are satisfied in a given case will, however, depend upon the facts and circumstances of each case. It is eventually the satisfaction of the Court as to the reliability of the confession, keeping in view the circumstances in which the same is made, the person to whom it is alleged to have been made and the corroboration, if any, available as to the truth of such a confession that will determine whether the extra judicial confession ought to be made a basis for holding the accused guilty.

32. Adverting to the case in hand, the extra judicial confession made by the accused to Mohd. Rustam, is voluntary, truthful and unaffected by any inducement that could be termed to be unreliable or unworthy of credence. This is particularly so since Rustam was the person under whom both the accused persons were working and earlier also when they were reprimanded by the deceased for not working properly, they had confided in him and at that time he had advised both of them to work properly. Initially when the accused had come to him during the intervening night and confessed the crime, at that time, he did not take it seriously as they were under the influence of liquor and therefore, he asked them to go to their house and sleep, however, after the recovery of dead body, he disclosed this fact to the police on the very next day. As such, it cannot be said that his statement about the confession made by the accused was an afterthought. Furthermore, the factum of accused persons making the confessional statement before Mohd. Rustam has not been challenged in cross-examination, so much so that even no suggestion was given to the witness that no such confessional statement was made by the accused persons to this witness.

33. The Supreme Court in *Laxmibai (Dead) thr. L.Rs. and Another Vs. Bhagwantbuva (Dead) thr. L.Rs. and Others*, examined the effect of non-cross examination of witness on a particular fact/circumstance and held as under:-

31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the

opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.

34. This view was reiterated by Hon"ble Supreme Court in Gangabhavani Vs. Rayapati Venkat Reddy and Others, Under the circumstances, this extra judicial confession is another incriminating piece of evidence connecting the accused with the crime.

Recovery of weapon of offence

35. On 18th May, 2009, SI Rajender Singh along with SHO Inspector Lakhender Singh and other police officials and Mohd. Rustam went to Old Delhi Railway Station. On the pointing out of Mohd. Rustam, accused Mohd. Shahid Khan and Mohd. Irshad Alam were apprehended. Both the accused were arrested. Accused Mohd. Shahid Khan made a disclosure statement Ex. PW-15/F stating therein that due to filthy abuses hurled by the deceased, he as well as Mohd. Irshad Alam were very annoyed. They hatched a conspiracy and took the deceased with them on the pretext of giving him a party. Thereafter, he strangled the deceased with a handkerchief and after he died, then gave knife injury on his neck with paper cutter, cut his penis and threw the same in the ganda nala. The blade was thrown in the bushes. He further stated that he had thrown the blood stained shirt and handkerchief in the kudedaan and he could get recovered the blade, blood stained shirt and the handkerchief. Although the handkerchief and the blood stained shirt of the accused could not be recovered, however, he led the police party to the place of occurrence, i.e., opposite white flats near ganda nala Park, Kapashera and got recovered one blood stained broken blade meant for cutting paper and leather. Besides the police officials, one independent witness PW14, Gautam Yadav was also present at the time of recovery of the blade.

36. The recovery has been challenged by learned counsel for the appellant on the ground that the recovery had taken place from an open space and in fact, the crime team had already visited the place and, therefore, it cannot be said that the recovery was effected at the instance of the accused in order to connect him with crime. The submission is devoid of merit, inasmuch as, when the crime team had visited the spot, one piece of blade of paper cutting knife besides other articles were visible at the spot and the same were taken into possession.

However, recovery of the blade was affected from the bushes and according to PW-14 Gautam Yadav, it was not visible from a distance. That being so, since the blade was lying in the bushes and was not otherwise visible, therefore, it cannot be said that the blade was lying in open area accessible to all so that the recovery of the blade in pursuance to the disclosure statement made by the accused may be held to be inadmissible in evidence. All the police officials as well as the independent witness have been cross-examined at length in regard to the recovery of the blade. However, nothing material could be elicited to discredit their testimony. Moreover, Gautam Yadav was totally an independent witness, who was neither known to the accused nor to the deceased and as such, there is no plausible reason as to why he would either depose in favour of the deceased or against the accused. His presence at the spot was quite natural as he was also a resident of Kapashera village and according to him he was present at his house at Chetanya Apartments, Kapashera village. Police officials were present in front of his complex near ganda nala opposite park. Many public persons were present. He also went there. SHO requested the public persons to join the proceedings and he voluntarily joined the investigation and thereupon accused Mohd. Shahid Khan got recovered the blood and mud stained blade from the bushes in his presence. Under the circumstances, recovery of blood stained blade at the instance of accused stands proved.

Scientific Evidence

37. It has come on record that after receipt of information regarding the dead body of one male lying on the slope near ganda nala, SI Sudan Singh along with Constable Lakhmi Chand reached the spot where blood in huge quantity was found at the spot. One railway ticket and one paper cutter blade was also lying there. All these articles were taken into possession vide different seizure memos. After post-mortem of the dead body was conducted, Dr. Komal Singh handed over the clothes and blood sample of the deceased. After the arrest of the accused, one blade was recovered which was also seized. During the course of investigation, all the exhibits were sent to FSL. As per report Ex. PA given by Ms. Shashi Bala, Sr. Scientific Assistant, blood was detected on the rail ticket, plastic handle with broken blade and pant of the deceased. Accused Mohd. Irshad Alam had also got recovered his T. shirt on which also blood of human origin was found. As per the report, the blood group of the deceased was of "B" group and on T. shirt of co-accused also, human blood of "B" group was found. However, as regards the rail ticket, broken blade and pant of the deceased, the blood group could not be opined. That itself, however, is not fatal.

38. In State of Rajasthan Vs. Teja Ram and Others, , one of the circumstances which the Trial Court relied on as incriminating against the accused was the recovery of two axes (kulhadis). On the strength of the statements of two of the accused persons, the said axes (kulhadis) were subjected to chemical examination and the result was that both the axes (kulhadis) were found stained with blood. However, when they were further subjected to test by the serologist,

the blood on one axe was found to be of human origin while the blood stain on the other axe was found to be so disintegrated that its origin became undetectable. A Division Bench of the High Court of Rajasthan declined to act on the evidence relating to the recovery of axes for the reason that human blood could be detected only on one of them while the origin of the blood on the other was not established, there was room for entertaining doubt as to the real person whose blow with the axe would have caused the injury. The Supreme Court finding the reasoning of the High Court unsustainable, opined as under:-

25. Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to hematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.

39. In the case of Gura Singh Vs. The State of Rajasthan, the prosecution proved beyond doubt the recovery of the blood stained "chadar" (sheet) belonging to the Appellant and kassi, the weapon of offence on the basis of the voluntary disclosure statement made by the accused, who was charged with the offence of patricide and had allegedly smashed the skull of the deceased with the kassi. Both the Trial Court as well as the High Court held that the prosecution had successfully established the making of the disclosure statements by the Appellant and the consequent recovery of the weapon of offence and "chadar" at his instance. The serologist and chemical examiner found the "chadar" (sheet) and other items to be stained with human blood. However, the origin of blood stains on the kassi and other items like the shoes of the accused could not be determined on account of disintegration with the lapse of time. The contention was sought to be raised on behalf of the Appellant that the prosecution had failed to connect the accused with the commission of crime and the judgments of the Supreme Court in Prabhu Babaji Navle Vs. State of Bombay, and Raghav Prapanna Tripathi Vs. The State of Uttar Pradesh, were pressed into service. Rejecting the aforesaid contention, the Supreme Court held that the effect of the failure of the serologist to detect the origin of blood due to disintegration in the light of the aforesaid cases was considered by this court in Teja Ram's case (supra) and in view of the authoritative pronouncement of this court in the said case, there was no substance in the submission of the learned counsel for the Appellant that in the absence of the report regarding the origin of the blood, the Trial Court could not have convicted the accused.

40. In Ramnaresh and Others Vs. State of Chhattisgarh, which was a case u/s.

302/499/376(2)(g) r/w Section 34 IPC, the plea was taken that the FSL report does not connect the accused with the commission of crime as the FSL report did not give the grouping of the blood/semen. Repelling the contention, it was held by Hon"ble the Supreme Court that FSL report was inconclusive but not negative which would not provide the accused with any material benefit.

41. As stated above, blood was detected on rail ticket, plastic handle with broken blade and pant of the deceased and T. shirt of co-accused Mohd. Irshad Alam which was opined to be of "human origin". Mere fact that "group" of blood could not be opined, does not provide the accused with any material benefit.

42. The yellow colour plastic handle with piece of broken blade recovered at the instance of the accused and piece of blade lying at the spot were also sent to FSL and as per the report given by Sh. Parshuram Singh, Sr. Scientific Officer, following opinion was given:-

The blade piece Exhibit - 3 and blade piece with handle Exhibit - 5 were examined under microscope, VISPEC and using other measuring tools, it was found that the blade piece Exhibit - 3 and blade piece in Exhibit - 5 were similar in respect of width, thickness, appearance of surface. When broken edge of blade piece Exhibit - 3 was placed in juxta position with blade piece in Exhibit - 5, they were found physically fitted.

Above observations indicate that the broken blade Exhibit - 3 and blade with handle Exhibit - 5 were part of one knife.

43. This report further proves that the blade piece lying at the spot and the blade piece with handle recovered at the instance of the accused were part of the same knife and this is another clinching piece of incriminating circumstance connecting the accused with crime.

44. The circumstances as narrated above and proved by the prosecution establish the case against the accused beyond all reasonable doubts. Learned Trial Court was right in observing that prosecution has not only been able to prove with cogent, reliable and trustworthy evidence, all the circumstances forming part of chain of evidence against the accused but also that the chain is consistent only with his guilt for the offence as charged with and is totally inconsistent with any possibility of his being innocent.

45. When all the incriminating evidence was put to the accused, while recording his statement u/s 313 Cr.P.C., he pleaded innocence and alleged false implication in this case. It was alleged that he had a dispute with Rustam, on account of some payment, which was outstanding towards Rustam and who had not paid the amount for three months. This plea seems to be an afterthought as it has seen the light of the day for the first time in the statement of the accused recorded u/s 313 Cr.P.C. Besides that, the plea is very vague as it is not disclosed as to when the money was given to the witness and how much amount was due towards Rustam. Moreover, the best person to admit or deny this transaction was

Rustam. However, no such suggestion was given to him that the accused and Rustam had any money transaction between them. The only suggestion given to the witness was that he was annoyed with the accused since he was not invited for party by the accused which was denied by him. Under the circumstances, the plea taken by the accused does not appeal to reason.

46. While passing over, the other submissions made by the learned counsel for the appellant are also dealt with.

47. It was submitted that although the FIR was allegedly registered at 12:30 p.m., however, the copy of FIR was received at the office of the Magistrate at 6:00 p.m. only, as such, there is delay in forwarding the report to the Magistrate and, as such, an adverse inference is to be drawn against the prosecution. Reliance was placed on Bhajan Singh (supra). This decision does not help the appellant in any manner, inasmuch as, it was observed that delay in despatch of FIR by itself is not a circumstance which can throw out prosecution's case in its entirety. Dealing with the aspect of delay in sending the copy of FIR to Court, Hon^{ble} Supreme Court observed as under:-

24. In Shiv Ram and Another Vs. State of U.P., this Court considered the provisions of the Section 157, Code of Criminal Procedure, which require that the police officials would send a copy of the FIR to the Illaqa Magistrate forthwith. The court held that if there is a delay in forwarding the copy of the FIR to the Illaqa Magistrate, that circumstance alone would not demolish the other credible evidence on record. It would only show how in such a serious crime, the Investigating Agency was not careful and prompt as it ought to be.

25. In Munshi Prasad and Ors. v. State of Bihar this Court considered this issue again and observed:

13...While it is true that Section 157 of the Code makes it obligatory on the officer in charge of the police station to send a report of the information received to a Magistrate forthwith, but that does not mean and imply to denounce and discard an otherwise positive and trustworthy evidence on record. Technicality ought not to outweigh the course of justice-if the court is otherwise convinced and has come to a conclusion as regards the truthfulness of the prosecution case, mere delay, which can otherwise be ascribed to be reasonable, would not by itself demolish the prosecution case.

While deciding the said case, this Court placed relied upon its earlier judgments in Pala Singh and Anr. v. State of Punjab and State of Karnataka v. Moin Patel.

26. In Rajeevan and Anr. v. State of Kerala this Court examined a case where there had been inordinate delay in sending the copy of the FIR to the Illaqa Magistrate and held that un-explained inordinate delay may adversely affect the prosecution case. However, it would depend upon the facts of each case.

27. A similar view was reiterated in Ramesh Baburao Devaskar and Ors. v. State of Maharashtra, wherein there had been a delay of four days in sending the copy

of the FIR to the Illaqa Magistrate and no satisfactory explanation could be furnished for such inordinate delay. While deciding the said case, reliance had been placed on earlier judgments in *State of Rajasthan v. Teja Singh and Ors.* and *Jagdish Murav v. State of U.P. and Ors.* (See also *Sarwan Singh and Ors. v. State of Punjab*, *State of U.P. v. Gokaran and Ors.* *Gurdev Singh and Anr. v. State of Punjab* *State of Punjab v. Karnail Singh*, *State of J and K v. Mohan Singh and Ors.*, *N.H. Muhammed Afras v. State of Kerala*, *Sarvesh Narain Shukla v. Daroga Singh and Ors.* and *Arun Kumar Sharma v. State of Bihar*).

28. Thus, from the above it is evident that the Cr.P.C. provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not anti-timed or anti-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act u/s 159 Code of Criminal Procedure, if so required. Section 159 Code of Criminal Procedure empowers the Magistrate to hold the investigation or preliminary enquiry of the offence either himself or through the Magistrate subordinate to him. This is designed to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction.

29. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been anti-timed or anti-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression "forthwith" mentioned therein does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. Of course, the same is to be sent within reasonable time in the prevalent circumstances.

30. However, un-explained inordinate delay in sending the copy of FIR to the Magistrate may affect the prosecution case adversely. An adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations. Delay provides legitimate basis for suspicion of the FIR, as it affords sufficient time to the prosecution to introduce improvements and embellishments. Thus, a delay in dispatch of the FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when the prosecution furnishes a cogent explanation for the delay in dispatch of the report or prosecution case itself is proved by leading unimpeachable evidence.

48. In the instant case, there was no delay in lodging the FIR, inasmuch as, call regarding murder of a male was received by Lady Constable Sudesh at about 9:14 a.m. The information was given to W HC Saroj who recorded DD No. 12A at 9:20 a.m. and handed over the same to SI Sudan Singh. Thereafter, SI Sudan Singh along with constable reached the spot. Information was also sent to the

SHO. Inspector Lakhender Singh reached the spot and inspected the place of crime. His dead body was identified by PW1, Farzana to be that of her husband. Thereafter, the rukka was prepared and FIR was registered at 12:45 p.m. Copy of the FIR was sent to the concerned Magistrate and as per the endorsement, it was received by him at his residence at 6:00 p.m. The slight delay in reaching the FIR to the Magistrate does not cause any prejudice to the accused. It is pertinent to note that the defence did not put any question on these issues while cross-examining the material witnesses and providing them an opportunity to explain the delay. Thus, we do not find any force in the submissions made by learned counsel for the appellant in this regard.

49. The next submission of learned counsel for the appellant that the assailants were not named at the very first instance and the FIR was registered against unknown persons after the dead body was duly identified by the wife of the deceased also cast doubt on prosecution version, is devoid of merits. PW1 Farzana is not an eye-witness of the incident. The very fact that she only identified the dead body and did not name the appellant and co-accused, rather lends credence to the prosecution version that despite the fact that 15 days prior to the death of her husband, quarrel had taken place between the deceased and the accused persons and they had hurled abuses on each other. Even thereafter, the accused persons extended threats to Farzana that they would kill her husband and in fact they also visited her house and threatened Mohd. Naushad to kill him yet the threats were not taken very seriously by the wife of the deceased, and therefore, although on reaching the spot, she identified the dead body of her husband but did not name the accused persons so as to implicate them falsely. She being the wife of the deceased was interested in getting the real culprits booked. It is only after the other circumstantial evidence came on record connecting the accused persons with the crime that the charge sheet was submitted against them, therefore, omission to mention the name of accused persons as assailant of the crime, in the circumstances of the case, does not cast any doubt on prosecution case.

50. As regards last limb of argument of learned counsel for the appellant that there is variance between ocular and medical evidence and the medical evidence completely rules out the possibility of ocular evidence being true, therefore, the ocular evidence has to be discarded, again is bereft of merit.

51. Although it is true, that as per the post-mortem report, time since death was 72 hours. That being so, as per this report, the death might have taken place sometimes between 12:15 p.m. to 1:20 p.m. on 16th May, 2009, however, PW-15 Mohd. Rustam has deposed that on 16th May, 2009, after finishing their work at 8:00 p.m., he, Mohd. Naushad, Mohd. Shahid Khan and Mohd. Irshad Alam left the place of work for home. Mohd. Naushad, Mohd. Shahid Khan and Mohd. Irshad Alam, however, made a plan for a party. After getting down from bus near Oberoi Farm, Mohd. Naushad, Mohd. Shahid Khan and Mohd. Irshad Alam went to Kapashera Border for party whereas he went to his house and

slept. Meaning thereby, during day time, all of them were working in the factory and therefore, between 12:15 p.m. to 1:20 p.m., Mohd. Naushad was alive. According to Rustam, both the accused came to his room at about 12:30 a.m. and then they informed him that they had killed Mohd. Naushad, meaning thereby that Mohd. Naushad was murdered between 8:00 p.m. to 12:30 a.m. The opinion given by a medical witness need not be the last word on the subject. After all an opinion is what is formed in the mind of a person regarding a particular fact situation. It would be erroneous to accord undue primacy to the hypothetical answers of medical witness to exclude eye-witness account, which has to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant". In Bhajan Singh (supra) relied upon by learned counsel for the appellant also it was held that ocular testimony of a witness has greater evidentiary value viz. a viz. medical evidence. When medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of evaluation of evidence, however, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

52. Matter came up for consideration in Pattipati Venkaiah Vs. State of Andhra Pradesh, , where it was held by Hon"ble Apex Court that medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a Computerised or mathematical fashion so as to be accurate to the last second.

53. Umesh Singh Vs. State of Bihar, was also a case where according to the prosecution, the incident had taken place on 16th July, 1996 at 3:30 p.m. whereas as per the post-mortem report, the incident must have taken place in the early hours of 16th July, 1996 and relying upon the same, it was pleaded that the medical evidence is not in conformity with the prosecution case, rather it supports the defence version making the entire prosecution case false. The submission was repelled by observing that same is contrary to the law laid down in Abdul Sayeed Vs. State of Madhya Pradesh, and the relevant paragraphs were extracted as under:-

33. In State of Haryana Vs. Bhagirath and Others, it was held as follows:

15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.

34. Drawing on Bhagirath's case (supra.), this Court has held that where the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".

35. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities can not be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

21...The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

36. In Solanki Chimanhbai Ukabhai Vs. State of Gujarat, , this Court observed:-

13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

It was further observed that-

39. The position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

54. Similar view was taken in judgments reported as Dasari Siva Prasad Reddy Vs. The Public Prosecutor, High Court of A.P., , Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, Rakesh v. State of Madhya Pradesh, (2011) 9 SCC 698.

55. This being the legal position, it is to be seen whether the medical evidence

makes the ocular testimony improbable so as to disbelieve the same. Except for variation in the time of death, there is no variance between ocular testimony and medical evidence. Even as regards "time of death" same has been given as "72 hours" by approximation only. As observed in aforesaid decisions, medical science is not yet so perfect as to determine the exact time of death. Except for this variation in time, the medical evidence is completely in consonance with ocular and circumstantial evidence. When PW16, SI Sudan Singh and PW19, HC Lakhmi Chand reached the spot, they found a cut on the throat and neck of deceased, injury marks on his head and right cheek. His private organ was cut from the body. All this is in consonance with the post-mortem report referred above. Under the circumstances, it cannot be said that the evidence of the witness for the prosecution is inconsistent with medical evidence.

56. In view of the above factual matrix and upon appreciation of evidence, we find that the evidence has been appreciated by the learned trial court in consonance with the rules and procedure of law. The findings can neither be termed as perverse or improbable. The appellant has been convicted by a well reasoned judgment. We find no merit in the present appeal and the same is dismissed accordingly.