

(2023) 03 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No.581 Of 2019

Rashpal Singh Alias Vicky	Vs	APPELLANT
State Of Himachal Pradesh		RESPONDENT

Date of Decision : 03-03-2023

Acts Referred:

Indian Penal Code, 1860 — Section 302, 376, 392, 458, 460
Evidence Act, 1872 — Section 27, 106
Code Of Criminal Procedure, 1973 — Section 161, 313, 437A

Citation : (2023) 03 SHI CK 0001

Hon'ble Judges : Sabina, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Anjali Soni Verma, Rakesh Dhaulta

Final Decision : Allowed

Judgement

Sabina, J

1. Appellant has filed the appeal challenging the judgment/order dated 10.07.2019 passed by the trial Court, whereby he was convicted and sentenced as under:-

Section 458 of the Indian Penal Code

:

Rigorous imprisonment for five years and to pay a fine of Rs. 3,000/-. In default of payment of fine, he shall further undergo imprisonment for six months

Section 302 of the Indian Penal Code

:

Rigorous imprisonment for life and to pay a fine of Rs. 5,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for six months.

Section 392 of the Indian Penal Code

:

Rigorous imprisonment for three years and to pay a fine of Rs. 2,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for one month.

2. Prosecution story, in brief, is that on 2nd May, 2017, informant Vishal Chandel had gone to Village Khurwari for harvesting the Wheat crop. Ganga Dei had taken Darats from the informant about 2-3 days prior to 2nd May, 2017. Since the Darats were required by the informant, he was sent by his aunt, to the house of Ganga Dei, to bring the same. The door of the house of Ganga Dei was lying closed. Informant knocked at the door, but it was not opened by anyone. After climbing on the drum kept by the side of the door, informant saw that Ganga Dei was lying naked below her chest with injuries on her head and body. Informant informed his uncle Khem Chand in this regard, who in turn informed the Gram Panchayat and the Police. Formal FIR No.100, dated 2nd May, 2017, was registered at Police Station, Ghumarwin, District Bilaspur, under Sections 302 and 460 IPC.

3. Inspector Sher Singh along with other Police officials, on receiving the information about the murder, reached the spot and found that the house of Ganga Dei was lying locked from inside for the last 2-3 days. Forensic team along with dog squad were called to the spot. Thereafter, with the help of villagers, the door of the house of Ganga Dei was opened. Forensic team preserved the evidence and handed over the same to the Police. Photographs of the spot were taken. The dead body of Ganga Dei was sent for postmortem examination and thereafter the dead body was handed over to the family members of the deceased.

4. During investigation it transpired that deceased Ganga Dei had engaged Ram Pal, Anil Kumar and the appellant to do labour work, for harvesting the wheat crop. Ram Pal and Anil Kumar during interrogation disclosed that on 30th April, 2017, they had worked for the whole day and after receiving remuneration from Ganga Dei, they had left for their house, whereas, appellant had stayed back. Anil Kumar informed the police that appellant was planning to go to his house in State of Jammu and Kashmir on 2nd May, 2017 to attend a marriage.

5. Father of the appellant was interrogated and he disclosed that the appellant had gone to the State of Jammu and Kashmir to attend a marriage.

6. On suspicion, ASI Chaman Lal along with other Police party were sent to State of Jammu and Kashmir for search of the appellant. ASI Chaman Lal informed the police of police post, Chasana about the purpose of his visit and he came to know that the appellant had been detained by the said police for creating nuisance in the marriage party. Custody of the appellant was handed over to ASI Chaman Lal by the police of Police Post, Chasana.

7. During interrogation, appellant suffered the disclosure statement under

Section 27 of Indian Evidence Act and on the basis of the same recoveries were effected.

8. After completion of investigation and necessary formalities, challan was presented against the appellant under Sections 302, 376, 392, 458 of the Indian Penal Code.

9. Charges were framed against the appellant under Sections 458, 376, 302, 392, IPC, by the trial Court on 20th December, 2017. Appellant did not plead guilty of the charges framed against him and claimed trial.

10. In order to prove its case, during trial, prosecution examined 25 witnesses.

11. After the close of prosecution evidence, appellant when examined under Section 313 of the Code of Criminal Procedure, prayed that he was innocent and a false case had been planted against him in connivance with Ram Pal, Anil Kumar and son-in-law of the deceased.

12. Appellant examined two witnesses in his defence.

13. Learned trial Court, vide impugned judgment/order dated 10th July, 2019, ordered the conviction and sentence of the appellant as mentioned in para 1 of this judgment. Hence, the present appeal by the appellant.

14. Learned counsel for the appellant has submitted that the prosecution had miserably failed to prove its case against the appellant. Appellant has been falsely involved in this case merely on the basis of suspicion. Prosecution had failed to complete the chain of circumstances leading towards the guilt of the appellant. A perusal of the charges, framed against the appellant, reveal that the incident had occurred in the night intervening 1 st /2nd May, 2017, whereas, the appellant had already left for the State of Jammu and Kashmir in the morning on 1st May, 2017. The said fact is evident from the testimonies of Investigating Officer PW-24 Sher Singh as well as PW-6 Ram Pal. From the postmortem examination also it can be said that the murder had taken place in the night intervening 1st/2nd May, 2017 and not in the night intervening 30th April, 2017/1st May, 2017. False recoveries had been planted against the appellant by the police with a view to solve the case. Prosecution had failed to establish any motive available with the appellant to have committed murder of an eighty years old woman. Appellant was acquitted of the charge framed against him under Section 376 IPC, by the trial Court.

15. Learned Additional Advocate General, on the other hand, has opposed the appeal and has submitted that the prosecution had been successful in proving its case. Recovery of the weapon, used at the time of offence, had been effected from the appellant and the blood stains found on the weapon (Darat), matched with the blood group of the deceased. Appellant had been last seen in the company of the deceased.

16. Present case relates to murder of Ganga Dei and robbery committed by the

appellant. Case rests on circumstantial evidence.

17. The Hon'ble Supreme Court in Criminal Appeal Nos. 1597-1600 of 2022, titled *Munikrishna @ Krishna etc. Versus State by Ulsoor PS*, 2022 LiveLaw (SC) 812, has held as under:-

"11. It is a case of circumstantial evidence and in a case of circumstantial evidence, the entire chain of evidence must be complete and the conclusions which is arrived after examining the chain of evidence must point towards the culpability of the accused and to no other conclusion. This, however, is clearly missing from the case of the prosecution. The entire case of the prosecution is based on the so-called confessional statements or voluntary statements given by accused Nos. 1 to 5 (all the present appellants) while they were in police custody. Statement given by an accused to police under Section 161 of Cr. PC is not admissible as evidence. The so-called evidence discovered under Section 27 of Indian Evidence Act, 1872, i.e., the recovery of stolen items and the recovery of the weapon are also very doubtful.

12. In a case of circumstantial evidence, the Court has to scrutinize each and every circumstantial possibility, which is placed before it in the form of an evidence and the evidence must point towards only one conclusion, which is the guilt of the accused. In other words, a very heavy duty is cast upon the prosecution to prove its case, beyond reasonable doubt.

As early as in 1952, this Court in its seminal judgment of *Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh* 1 had laid down the parameters under which the case of circumstantial evidence is to be evaluated. It states:-

"... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused..."

Hanumant (supra) has been consistently followed by this Court. To name a few, *Tufail (Alias) Simmi vs. State of Uttar Pradesh*, *Ram Gopal v. State of Maharashtra* and *Sharad Birdhichand Sarda v. State of Maharashtra*.

In *Musheer Khan @ Badshah Khan & Anr. v. State of Madhya Pradesh* dated 28.01.2010, this Court while discussing the nature of circumstantial evidence and the burden of proof of prosecution stated as under: -

"39. In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a

complete sequence. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances.

40. Chief Justice Fletcher Moulton once observed that "proof does not mean rigid mathematical formula" since "that is impossible". However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion. Circumstantial evidence, on the other hand, has been compared by Lord Coleridge "like a gossamer thread, light and as unsubstantial as the air itself and may vanish with the merest of touches". The learned Judge also observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape. Therefore, certain rules have been judicially evolved for appreciation of circumstantial evidence.

41. To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused. (See *Raghav Prapanna Tripathi v. State of U.P.* [AIR 1963 SC 74 : (1963) 1 Cri LJ 70])

42. The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused. (See *State of U.P. v. Dr. Ravinder Prakash Mittal* [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : 1992 Cri LJ 3693] , SCC p. 309, para 20.)

43. While appreciating circumstantial evidence, we must remember the principle laid down in *Ashraf Ali v. King Emperor* [21 CWN 1152 : 43 IC 241] (IC at para 14) that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must prevail.

44. The next principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and are incapable of explanation upon any other reasonable hypothesis except his guilt.

45. When a murder charge is to be proved solely on circumstantial evidence, as in this case, presumption of innocence of the accused must have a dominant role. In *Nibaran Chandra Roy v. King Emperor* [11 CWN 1085] it was held that the fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It seems, therefore, to follow that whatever force a presumption arising under Section 106 of the Evidence Act may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in

comparison with the dominant presumption of innocence.

46. The same principles have been followed by the Constitution Bench of this Court in *Govinda Reddy v. State of Mysore* [AIR 1960 SC 29 : 1960 Cri LJ 137] where the learned Judges quoted the principles laid down in *Hanumant Govind Nargundkar v. State of M.P.* [AIR 1952 SC 343 : 1953 Cri LJ 129] The ratio in *Govind* [AIR 1952 SC 343 : 1953 Cri LJ 129] quoted in AIR para 5, p. 30 of the Report in *Govinda Reddy* [AIR 1960 SC 29 : 1960 Cri LJ 137] are:

"5. ... '10. ... in cases where the evidence is of a circumstantial nature, the circumstances [which lead to the conclusion of guilt should be in the first instance] fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be [shown] that within all human probability the act must have been [committed] by the accused.' [As observed in *Hanumant Govind Nargundkar v. State of M.P.*, AIR 1952 SC 343 at pp. 345-46, para 10.] " The same principle has also been followed by this Court in *Mohan Lal Pangasa v. State of U.P.* [(1974) 4 SCC 607: 1974 SCC (Cri) 643: AIR 1974 SC 1144]"

18. Let us examine the facts of the present case to come to a conclusion as to whether the prosecution has been successful in completing the chain of circumstances leading towards the guilt of the appellant.

19. PW-8 Dr. N.K. Sankhyan deposed that on 2nd May, 2017, Police had moved an application before Medical Officer, Civil Hospital, Ghumarwin for conducting postmortem examination on the dead body of deceased Ganga Dei, aged 80 years. The body was referred to R.H. Bilaspur on 3rd May, 2017 for postmortem examination. He conducted postmortem examination on the dead body of deceased Ganga Dei from 1.45 p.m. to 2.30 p.m. on 3rd May, 2017 and had observed as under:-

" As per information supplied by police, the deceased found dead in her room in naked condition. Deceased died due to head injury with sharp edged weapon by some unknown person.

EXTERNAL APPEARANCE: Dead body was of an old female having length 156 c.m. Deceased was wearing green "Chuni" soiled with blood, yellow coloured lady's shirt ("Kameej") soiled with blood, steel ring in ring finger of left hand and yellowish coloured lady trouser ("Salwar") tied with red and grey coloured "Naara" of 90 c.m. from the tied point. Left lower limb and private parts were uncovered with "Salwar", whereas right lower limb was covered with "Salwar". Waist was 95 c.m., girth over hips was 99 c.m. Forehead, face and scalp here were soiled with blood (clotted). Clotted blood was present in both nostrils and in mouth. Deceased was wearing black sacred thread around neck. Deceased

passed stool in her Salwar". Rigor mortis was present all over the body. There was black eye on right side. Clinically body was cooled down to room temperature. Bluish purple coloured hypostasis was present on back surface of the body and was fixed. Teeth were absent in both jaws on both sides. Tongue was protruded. There was greenish colouration of skin in right iliac fossa.

NECK:- There was no ligature mark around neck. During dissection of neck, all parts of neck were found normal.

CRANIUM & SPINAL CORD

Scalp, Skull, Membranes & Brain.

List of antemortem injuries:-

1. There was clean cut margins wound with sharp edged weapon, over skull and forehead in fronto-parietal region right side, obliquely placed, having length 8 c.m. with maximum breadth in its central portion was 2 c.m., with minimum breadth 0.2 c.m. on both ends i.e. anterior and posterior portions x brain deep, cutting scalp hair, scalp, skull, dura and brain right cerebral hemisphere in right fronto parietal region. There was sub-dural, extra-dural sub-arachnoid and brain haemorrhages, clotted blood was present in and around the wound.

2. There was clean cut margins wound over right eyebrow with sharp edge weapon. It was 9 c.m. long x 1 c.m. broad in its mid portion and was having breadth 0.1 c.m. in anterior end, where as 0.2 c.m. in the posterior end x bone deep with fracture of supra orbital bone right side. Clotted blood was present in and around the said wound, It was with sharp edged weapon.

3. There was clean cut margin wound on forehead extending to skull in parietal region right side. The length of wound was 4 c.m. and maximum breadth in the central portion of the wound was 1.5 c.m., breadth of said wound in anterior portion was 0.1 c.m., whereas in posterior end portion was 0.3 cm. x skull bone deep. Clotted blood was present in and around the wound. The said wound was with sharp edged weapon. Vertebrae were normal. There was no indication to open spine.

THORAX:- Thoracic walls, Ribs, Pleurae, larynx, trachea and lungs were normal. Lungs were pale. Pericardium was normal. Heart and large vessels were normal and empty.

Abdomen: Abdominal walls, peritoneum were normal. Mouth pharynx and esophagus was normal and as explained earlier.

Stomach was normal, containing about 250 ml. yellowish coloured semi solid food material with no specific smell of alcohol or poison.

Small intestines were normal, containing fluid and gases.

Large intestines were normal, containing fluid and gases.

LIVER, SPLEEN AND KIDNEYS- were normal and pale.

Bladder was normal and empty.

Organ of generation external and internal were normal, vaginal smear slides and vaginal swab were taken to give opinion about sexual assault.

Muscles, Bones & Joints:-

Any diseases and any deformity were nil.

Injury, fractures and dislocations as explained earlier.

CERTIFICATE OF CAUSE OF DEATH:-

In my opinion deceased died due to antemortem head injury, final opinion was kept reserved till report of chemical examiner is received.

Probable time that elapsed between injury and death was instantaneous to few minutes.

Probable time that elapsed between death and postmortem was 24 hours to 48 hours."

20. In his cross-examination, PW-8 deposed that there were no maggots. The maggot formation in the month of May in District Bilaspur generally appears after 36 to 48 hours.

21. A perusal of statement of the appellant recorded under Section 27 of the Evidence Act Ex.PW-17/C reveals that the appellant had stated that he had committed murder in the night intervening 30th April, 2017/1st May, 2017. So the first question that requires consideration is as to when the murder was committed in the present case.

22. In this regard, it would be relevant to go through the charges framed by the trial Court and the same reads as under:-

" That during the intervening night of 01.05.2017 and 02.05.2017 at place village Khuradi, Post Office Bhager, Tehsil Ghumarwin, Distt. Bilaspur, H.P. you accused have trespassed with criminal intention to commit offences of murder, rape and robbery and thereby committed offence of lurking trespass by night and as such committed an offence punishable under Section 458 I.P.C. and within the cognizance of this Court.

Secondly, on the aforesaid, date, time and place, you accused committed rape of Smt. Ganga Dei and as such committed an offence punishable under Section 376 I.P.C. and within the cognizance of this Court.

Thirdly, on the above said date, time and place and you accused had committed murder of Smt. Ganga Dei with the help of deadly weapon i.e. darat as well as one dupata and as such committed an offence punishable under Section 302 I.P.C. and within the cognizance of this Court.

Lastly, on the above said date, time and place and you accused had committed robbery by taking currency worth Rs. 2,000/- from the almirah kept in the room of the deceased after committing the murder of Smt. Ganga Dei and as such committed an offence punishable under Section 392 I.P.C. and within the cognizance of this Court.”

23. Thus, as per the charges framed by the trial Court against the appellant, the incident had occurred during the night intervening 1st May, 2017/2nd May, 2017.

24. PW-24 Inspector Sher Singh, deposed as under in his examination-in-chief:

“On the basis of my investigation, I reached on the conclusion that during the night of 01.05.2017, the accused has committed lurking house tress pass, thereafter raped the deceased, killed her with darat and stole money from deceased's almiraha and iron box. He fled away to J & after committing the offence”

25. Thus, as per the investigation conducted by the Police, murder had been committed during the night of 1 st May, 2017. The fact that the murder had occurred in the night intervening 1st/2nd May, 2017 is also evident from the postmortem examination report. In the present case, postmortem examination was conducted on 3rd May, 2017 at 1.45 p.m. and the dead body was received for postmortem examination at 1. 15 p.m. on 3rd May, 2017. As per PW-8, the time between death and postmortem was 24-48 hours. Thus, it can be safely concluded that the murder in the present case had occurred in the night intervening 1st/2nd May, 2017.

26. The defence version is that the appellant had gone to the State of Jammu and Kashmir in the morning on 1st May, 2017. Therefore, there was no possibility of the appellant having committed the murder of the deceased in the night intervening 1st/2nd May, 2017. In this regard, the statement of investigating officer PW-24 is relevant. The said witness in his examination-in-chief has stated that they had gone to Bagthedu and inquired from the landlord about the appellant and came to know that he had left for the State of Jammu and Kashmir in the morning on 1st May, 2017, after receiving salary from his landlord, with whom he was working as a domestic helper.

27. PW-6 Ram Pal is the witness examined by the prosecution to prove the circumstance of last seen vis-à-vis appellant and the deceased.

28. PW-6 Ram Pal deposed that he was a mason by profession. He knew Ganga Dei. On 30 th April, 2017, Ganga Dei had come to his house and had asked him to harvest her wheat crop. Anil Kumar was also present there. Appellant also reached there. He along with Anil Kumar and appellant harvested the crop of Ganga Dei. They had completed the work by 5.30 p.m. and she had paid Rs. 350/-each to them towards their labour. He along with Anil Kumar left the house of Ganga Dei, whereas, appellant remained there. On the next day, he had gone along with Anil Kumar for work to the place of Pritam and they came to know

that appellant had left in the morning after taking money from him. Appellant had told that he had to go to his native place.

29. Thus, from the testimony of PW-6, it is evident that appellant had harvested the crop of Ganga Dei deceased along with PW-6 Ram Pal and Anil Kumar on 30th April, 2017 and they had received their wages from her. It is also evident from the testimony of PW-6 that on the next day, he (PW-6) along with Anil Kumar had gone for work at the place of Pritam where they had come to know that appellant had left the place in the morning after taking money from him.

30. Thus, as per PW-6, appellant, after receiving money from Pritam had left for his native place in the morning on 1st May, 2017. Appellant was taken in custody from the State of Jammu and Kashmir. Thus, undisputedly, appellant had gone to the State of Jammu and Kashmir to attend a wedding. From the statements of PW-6 and PW-24, it stands established that the appellant had gone to his native place in the morning of 1st May, 2017. Murder in the present case had occurred in the night intervening 1st/2nd May, 2017. In this situation, it can be safely said that the prosecution has failed to establish the presence of the appellant at the spot at the time of incident. Appellant was last seen by PW-6 in the premises of Ganga Dei on 30th April, 2017 and on the next day, appellant had gone to the premises of Pritam. After receiving money from Pritam, appellant had left for his native place. Nobody had last seen the appellant in the company of the deceased on 1st May, 2017. Hence, the circumstance of the appellant last seen in the company of the deceased, is not established on record. Rather from the prosecution evidence itself, it transpires that the appellant had left for his native place to attend a wedding in the morning on 1st May, 2017. Since the presence of the appellant at the spot at the time of incident is not established by the prosecution, the recoveries alleged to have been effected at the instance of the appellant are also rendered doubtful.

31. In order to establish the circumstance of recovery at the instance of the appellant, prosecution has examined PW-4 Chain Singh. The said witness has deposed that he was running a Dhaba in his village Chasana. On 4th May, 2017, appellant had visited his Dhaba at about 3-4 p.m. and had kept one bag in his Dhaba. Appellant had failed to return thereafter. On the next day, appellant came to his Dhaba followed by the Police. On inquiry, he had disclosed to the Police that the bag belonged to the appellant. Police clicked the photographs of the bags after closing the shutter of the shop. On search of the first bag, one ladies suit, one shawl having red stains, extension board and pants were recovered. From another bag, one towel, torch, pants and darat were recovered. The darat measured about 16 inches in length including 5½ inches wooden handle. The said witness was re-examined and in his re-examination, he specifically deposed that the appellant had kept one bag in his Dhaba and on the next day appellant had come to his Dhaba being followed by the Police and he had disclosed to the Police that the bag belonged to the appellant.

32. Ex.PW-17/C is the statement of the appellant under Section 27 of the Indian

Evidence Act, wherein, he has stated that after committing murder of the deceased on the night intervening 30th April, 2017/1st May, 2017, he had kept the weapon (Darat) used at the time of incident along with other articles in a shop in Chasana market and could get the same recovered. In the said statement it has not been specifically stated by the appellant that the articles kept by him in the shop were in two bags or were in one bag.

33. PW-18 ASI Chaman Lal has deposed that appellant had got two bags recovered from the shop of Chain Singh in Chasana bazar and one of the bags was Pithu bag and the other was a carrybag. From the Pithu bag, they had recovered one ladies Salwar, shirt, gents shirt, which was blood stained, one jean with belt, blood stained pair of plastic chappal and one extension board with wire. From the second bag, they had recovered a towel, jean, T-shirt, torch and one Darat, which was 16 inches long.

34. Thus, as per PW-18, appellant had got recovered two bags, whereas, PW-4 in his re-examination has specifically stated that the appellant had left one bag in his shop. In view of the above major discrepancy with regard to the number of bags left by the appellant in the shop of PW-4, circumstances of recovery of the weapon used at the time of offence at the instance of the appellant is rendered doubtful. It cannot be ascertained as to whether the darat was recovered from the bag allegedly left by the appellant. Moreover, appellant had also not disclosed in his statement that after keeping the darat in a bag with other articles, he had kept the bag in the shop.

35. In a case resting on circumstantial evidence, circumstance of motive gains significance. The prosecution case is that the appellant, with a view to commit robbery, had committed murder of the deceased Ganga Dei. At the time of arrest of the appellant Rs. 2705/- were recovered. Charge has been framed against the appellant to the effect that he had committed robbery by taking currency worth Rs. 2000/- from the Almirah kept in the room of the deceased, after committing her murder. The said fact is also rendered doubtful as the deceased had given Rs. 350/- to the appellant towards labour charges on 30th April, 2017. As per PW-6, Ram Pal, appellant had taken money from Pritam before leaving for his native place. The possibility that the money recovered from the pocket of the appellant at the time of his personal search might have been received by him towards the wages from Pritam cannot be ruled out. There was no dispute qua wages etc. between the appellant and deceased to have incited the appellant to have committed her murder. Hence, the circumstance of motive alleged by the prosecution leading to the murder of the deceased is also not established on record.

36. It is a settled preposition of law that prosecution has to discharge its burden by proving the guilt of an accused beyond the shadow of all reasonable doubt and it has to do so on the basis of the relevant and admissible evidence. Whenever there is a doubt in the prosecution story, benefit of the same has to be extended to an accused. In a case resting on circumstantial evidence,

prosecution is required to complete the chain of circumstances, leading towards the guilt of an accused and negating his innocence. However, in the present case, prosecution has failed to complete the chain of circumstances leading towards the guilt of the appellant and negating his innocence. Rather the possibility that someone else might have committed the murder of the deceased, cannot be ruled out.

37. After carefully scrutinizing the entire evidence on record, we are of the considered opinion that in the present case, prosecution has failed to prove its case against the appellant beyond the shadow of reasonable doubt for the following reasons:-

a) Prosecution has failed to established the theory of last seen of the appellant in the company of the deceased. Rather from the evidence on record, it is evident that the appellant had left the village in the morning on 1st May, 2017 to attend a wedding in the State of Jammu and Kashmir, whereas, the murder had occurred in the night intervening 1st/ 2nd May, 2017;

b) The recovery of the weapon and the blood stained cloths at the behest of the appellant are also rendered doubtful;

c) Prosecution has failed to establish any motive available with the appellant to have committed the murder of the deceased;

38. In the facts and circumstances of the case, we are of the opinion that the learned trial Court fell in error in ordering the conviction and sentence of the appellant as mentioned in para 1 of the judgment, although the prosecution had failed to establish its case with regard to the charges framed against the appellant.

39. Accordingly, the appeal is allowed and the impugned judgment of conviction and order of sentence dated 10th July, 2019, passed in Sessions Trial Number 26/7 of 2017 by the Sessions Judge, Bilaspur, are set aside. Appellant is acquitted of the charges framed against him. Appellant, who is in custody, be set at liberty forthwith, if not required in any other case.

40. In view of the provisions of Section 437-A Code of Criminal Procedure, 1973, appellant Rashpal Singh @ Vickey, is directed to furnish a personal bond in the sum of Rs.25,000/-, and a surety in the like amount, before the Registrar (Judicial) of this Court, which shall be effective for a period of six months, with stipulation that in the event of Special Leave Petition being filed against this judgment or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Supreme Court.

41. Office is directed to prepare the release warrant of the appellant accordingly.