

(2018) 05 RAJ CK 0178

In the Rajasthan High Court

Case No : Criminal Appeal No. 491, 326 of 2011

Shambhoo Lal @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 23-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 302, 311A
Arms Act, 1959 — Section 4, 25
Code of Criminal Procedure, 1973 — Section 173(8), 313
Indian Evidence Act, 1872 — Section 27
Identification of Prisoners Act, 1920 — Section 4, 5
Rajasthan Police Rules 1965 — Rule 6.26, 6.26(3), 6.26(3)(c)

Citation : (2018) 05 RAJ CK 0178

Hon'ble Judges : SANGEET LODHA, J;DR. VIRENDRA KUMAR MATHUR, J

Bench : Division Bench

Advocate : B.S.Jodha, Dharendra Singh, Shambhoo Lal, K.R.Bhati, Ajindra Kaur, Vishnu Kachhawaha, Kuldeep Sharma, S.K.Verma

Final Decision : Dismissed

Judgement

SANGEET LODHA, J.

1. These appeals are directed against the judgment and order dated 21.4.2011 passed by the Additional Sessions Judge, (Fast Track) No.1, Udaipur in

Sessions Case No. 169/09 whereby the appellants Shambhoo Lal and Ajindra Kaur were convicted for offence under Section 302 r/w Section 120B

IPC and sentenced to suffer life imprisonment and fine of Rs.5,000/- each, in default, to further suffer six monthsâ?? imprisonment. In addition to

above, the appellant Shambhoo Lal has been convicted for offence under Section 4/25 Arms Act and sentenced to suffer two yearsâ?? rigorous

imprisonment with fine Rs.1000/-, in default, to further suffer three monthsâ?? simple imprisonment.Â The sentences awarded to the accused

Shambhoo Lal were directed to run concurrently.

2. The prosecution story unfolded during the trial is that Amarjeet Singh and Smt. Ajindra Kaur entered into marriage, they had two children; a son

Jasbeer @ Montu and a daughter Harpreet. Amarjeet Singh was engaged in transport business and Shambhoo Lal was employed as Manager in his

business concern. Amarjeet Singh died and after his death Ajindra Kaur, Jasbeer @ Montu and Harpreet continued to live together in their flat B-203,

Galaxy Apartments, Girva, Udaipur. Harpreet was employed with R.K. Dotcom. On 2nd March, 2007 around 7.30 PM, when Harpreet came back

from the office, her mother Ajindra Kaur was at home. When, Harpreet asked her mother as to whether her brother Montu @ Jasbeer came to home

for taking meal or not, her mother replied that Montu came at 4.00 PM for taking meal and thereafter, went along with two friends, she had not seen

his friends before and further that Montu had said that his phone will remain switched off as he is going to a village. Harpreet tried to contact Montu,

but his phone was switched off. Around 10 PM, when Harpreet came in her room, she found bathroom locked, on being asked, her mother informed

that Montu went out after placing some goods therein and keys lie with him. On feeling the need of bathroom, Harpreet insisted on breaking the lock,

on this, her mother told that Montu will open the lock on his own in the morning. When Harpreet tried to inform the police on phone, her mother tried

to bite on her left hand by mouth. Harpreet locked the flat from outside and ran away. She asked the family members of Harish Nasa to permit her to

give a call to police, but she was not permitted saying that it is your internal family matter. She also asked the neighbour residing just opposite, but they

also declined. She contacted the police on phone and also to the Hawk (Police Patrolling Car). In the meantime, her mother also came down as the

flat bolted from outside was opened by someone. Harpreet refused to go upstairs and told her mother Ajindra Kaur to return her mobile, the mobile

was returned and thereafter, she contacted the police and Hawk was informed that this is the dispute between mother and daughter, and they will

solve it. In the night, her mother Ajindra Kaur told Harpreet to sleep in her room, but she declined and said that she would sleep in her own room only.

She could not sleep whole night, then in the morning, she called her brother's friend Suresh, he came and told that Montu was with him yesterday

till 2.00 PM. Then Suresh noticed that blood stains were present on wall and on Suresh making the call, the police came to Harpreet's home and

broke opened the bathroom's lock in front of them, the dead body of Montu @ Jasbeer was lying in bathroom in pool of blood. It was found

having incised wounds, Montu @ Jasbeer was murdered.

According to Harpreet the Flat, movable and immovable properties of her father were in the name of her mother, and her brother Montu had doubt

that her mother has illicit relation with Shambhoo Lal Teli working as Manager in their Transport Concern. Amarjeet Singh was in jail in connection

with a murder case, Harpreet was at Delhi and her brother Montu used to reside at Delhi and Mumbai. In the meantime, her mother Ajindra Kaur and

Shambhoo Teli were at Girva, Udaipur only. Amarjeet Singh was released on bail and thereafter died on 11.12.06. Thereafter, Harpreet and Jasbeer

@ Montu also started living with their mother at Girva. In January, 07, they came to know of relation between their mother and Shambhoo Teli,

Harpreet had scolded Shambhoo Teli several times on attending his phone calls. Their mother, Ajindra Kaur had agreed to transfer the flat in the

name of Montu and assured her to get execute the deed after Holi.

Accordingly, casting doubt on her mother Ajindra Kaur and Shambhoo Lal Teli, PW-2 Harpreet submitted a written report (Ex.P/12) of the incident

occurred to the police, at the place of occurrence.

3. On the basis of the written report (Ex.P/12), the police registered FIR (Ex.P/26) bearing No. 129/07 for offence under Section 302 IPC and the

investigation commenced.

4. After completion of the investigation, the police filed charge sheet before the Additional Chief Judicial Magistrate No.2, Udaipur against appellant

Ajindra Kaur for offence under Sections 302 read with Section 120B IPC and against the appellant Shambhoo Lal Teli for offences under Section 302

read with Section 120B IPC and 4/25 Arms Act. The matter was committed to the Session Judge, Udaipur which was later transferred to the Court

of Additional Sessions Judge, (Fast Track) No.1, Udaipur for trial. A separate charge sheet was filed against Juvenile Lavesh @ Lav Teli under

Section 302, 120B IPC and Section 4/25 Arms Act before Principal Magistrate, Juvenile Justice Board, Udaipur. Against the accused Shobha Lal @

Shubham Teli and Shokin, the investigation was kept pending under Section 173 (8) Cr. P.C.

5. The learned trial Judge framed the charges against the accused appellant

Ajindra Kaur for offence under Section 302 read with Section 120B IPC

and against the accused appellant Shambhoo Lal Teli for offences under Section 302 read with Section 120B IPC and Section 4/25 Arms Act. The

accused appellants denied the charges and claimed trial.

6. During the trial, the prosecution got examined as many as 21 witnesses PW-1 to PW-21 and exhibited the documentary evidence Ex.P/1 to P/88.

The accused appellants were examined under Section 313 Cr. P.C. No evidence was led in defence.

7. After due consideration of the evidence on record and the rival submissions, the trial Judge convicted the appellant Ajindra Kaur for offence under

Section 302 r/w 120B IPC and the appellant Shambhoo Lal Teli for offences under Section 302 r/w 120B IPC and Section 4/25 of the Arms Act and

sentenced them as indicated above. Hence these appeals.

8. Learned counsel for the appellant Ajindra Kaur submitted that there is no direct evidence against the appellant and the prosecution case is based on

circumstantial evidence. Learned counsel submitted that the incriminating circumstances set out by the prosecution have not been established beyond

reasonable doubt and therefore, the conviction of the appellant Ajindra Kaur is not sustainable in the eyes of law. Learned counsel submitted that

mere presence of the appellant at her own home, in no manner, could be considered an incriminating circumstance against her. Learned counsel

submitted that the factum of illicit relation of the appellant Ajindra Kaur with co-accused Shambhoo Lal Teli is also not substantiated on the basis of

any cogent evidence on record. Learned counsel would submit that blood stained foot print of the appellant Ajindra Kaur is also not proved after

following the procedure laid down under the law. Learned counsel submitted that the learned trial Judge has seriously erred in making the conduct of

the appellant accused after the incident as basis for her conviction for the offences charged. Learned counsel further submitted that neither there was

evidence of last seen nor the motive as alleged was proved by the prosecution. Learned counsel contended that the inference of the guilt on the basis

of circumstantial evidence can be justified only when all the incriminating facts and circumstances proved are found to be consistent only with the guilt

of the accused, whereas, in the instant case on the basis of the evidence which has come on record, the chain of the circumstances is not established;

no inference of guilt of the accused can be drawn and therefore, the appellant Ajindra Kaur deserves to be acquitted of the charges.

9. Mr. B.S.Jodha, learned counsel appearing for the appellant Shambhoo Lal contended that the incriminating circumstances set out by the prosecution

have not been proved beyond reasonable doubt and the chain of circumstances alleged to be proved cannot be said to be consistent only with the guilt

of the accused appellant and thus, the conviction of the accused appellant Shambhoo Lal for commission of the offence charged is not sustainable in

the eyes of law. Learned counsel submitted that apparently the FIR was lodged belatedly. Drawing the attention of the court to the deposition of

P.W.2-Harpreet, learned counsel urged that her conduct in not lodging the FIR on 2.3.07 itself, even after the doubt being created in her mind

regarding untoward incident with her brother makes the prosecution story suspicious. Learned counsel submitted that there was absolutely no reason

as to why she waited for Suresh Meghwal to arrive at the place of occurrence before lodging the report. Strangely enough, Suresh Meghwal who in

the first instance noticed the blood stains and was present at the place of occurrence during the investigation and before registering the report, was not

examined as witness by the prosecution. Thus, on the facts and in the circumstances of the case, the FIR lodged was after thought and further there is

no explanation as to why the same was forwarded to the Magistrate next day. Learned counsel submitted that P.W.3Pratap Singh deposed that he

had received information from Control Room but the Rojnamcha of Control Room was not exhibited in evidence by the prosecution.

10. Learned counsel submitted that it is unbelievable that when P.W.2-Harpreet reached to home, she did not notice the blood stains which were

noticed by Suresh Meghwal on the next day and further she even did not notice the existence of the blood on the mattresses on which she was

sleeping whole night, which according to the prosecution was found wet by blood at the time of seizure.

11. Learned counsel submitted that one of the incriminating circumstances against the appellant Shambhoo Lal found proved is the finger prints on the

glass (Ex.P/2), which was seized on 3.3.07 at 3.40 PM but then, prior to it Ex.P/10 was prepared wherein it is mentioned that upon the centre table,

four glasses were found, which shows that the glasses were already noticed at 12.30 PM but when the team of FSL reached the place of occurrence

and the photographs were taken, wherein no glasses are visible on the centre table, which shows that there were no glasses on the table at the place

of incident and Ex.P/2 has been prepared later on and thus, it was only a planted evidence to connect the accused appellants with the commission of

the crime. Learned counsel submitted that the glasses were not secured for taking the finger prints and thus, the finger prints taken subsequently could

not have been relied upon. Neither Dr. Daga heading the FSL Team nor the witness of Ex.P/2, Mr. Kishore Joshi was examined by the

prosecution.Â Learned counsel submitted that the finger prints of accused Ajindra Kaur and maid working at the home of the accused Ajindra Kaur

were not taken. The finger prints of the accused appellant were taken vide Ex.P/81 on 8.3.07 not in presence of the Magistrate and the procedure laid

down under the law for taking finger prints was not followed. Drawing the attention of the Court to Ex.P/81, learned counsel submitted that it does not

bear date, time and signature of the appellant. There is no evidence that the finger prints were kept in safe custody and sent to the FSL in sealed

condition in proper manner and thus, the same cannot be made basis for the conviction of the appellant. In support of the contention, learned counsel

has relied upon a decision of the Honâ??ble Supreme Court in the matter of â?? Mohd. Aman & Anr. vs. State of Rajasthanâ?, (1997) 10 SCC 44

and Bench decisions of this court in the matter of â??Raju vs. State of Rajasthanâ?, 2016 (1) Cr.L.R.(Raj.)468 and â??Sunder & Ors. vs. State of

Rajasthanâ?’,Â 2015(2) RLW 1296 (Raj.).

12. Learned counsel submitted that the photographs of blood stained bare foot print (Ex.P/43 & Ex.P/44) were taken, however, the same were not

lifted and sent to Forensic Science Laboratory for examination. Learned counsel submitted that the act of the prosecution in not producing the best

evidence warrants adverse inference against the prosecution. In support of the contention, learned counsel has relied upon a decision of the

Honâ??ble Supreme Court in the matter of â??Tomaso Bruno & Anr. vs. State of Uttar Pradeshâ?’,Â (2015) 3 SCC (Cri.) 54.

13. The Ex.P/21, the recovery memo of bushirt and pant from the appellant Shambhoo Lal does not bear his signature. Learned counsel urged that the

recovery of knife, clothes, key, mobile and car at the instance of accused appellant Shambhoo Lal is also doubtful. Learned counsel submitted that

Asrar Mohd. and Suresh Meghwal were the witnesses of the recovery memo of mobile phone, keys and knife (Ex.P/20), recovery memo of bushirt

and pant (Ex.P/21), recovery of Tata Indica Car (Ex.P/22), however, witness Suresh Meghwal was not examined by the prosecution. Learned

counsel submitted that as per the FSL Report (Ex.P/88), one knife and one â??Katarâ?? were sent for examination whereas no recovery of

â??Katarâ?? was ever made. List of the articles recovered were never prepared and forwarded to the Forensic Science Laboratory. The car is

alleged to be recovered at the instance of appellant accused on 6.3.07 vide Ex.P/22 but the keys thereof were recovered after two months on 25.5.07

in respect whereof no information was furnished by the appellant Shambhoo Lal.

Learned counsel submitted that the articles recovered did not remain intact in sealed condition till the same reached to FSL.

14. Learned counsel submitted that the mobile of the deceased was recovered from the mother of the deceased and the call details of sister of the

deceased, P.W.2-Harpreet though relevant were not obtained by the Investigating Officer. Learned counsel submitted that the prosecution projected

the illicit relationship between the accused Ajindra Kaur and Shambhoo Lal as the motive of commission of the crime, however, except the statement

of P.W.2-Harpreet, no other evidence was brought on record by the prosecution to prove the same. Learned counsel submitted that even as per

P.W.2-Harpreet, the appellant Ajindra Kaur had assured her deceased son Jasbeer to transfer the flat in his name and thus, the property dispute being

the motive, is also not substantiated by any evidence on record.

15. On the other hand, learned Public Prosecutor submitted that a bare perusal of the impugned judgment reveals that the entire evidence on record

has been considered by the learned trial Judge objectively and the findings arrived at regarding the chain of circumstances being established, indicating

towards the guilt of the accused, cannot be said to be perverse so as to warrant interference by this court. Learned Public Prosecutor submitted that

the dead body of the deceased was recovered from the bathroom of the flat and presence of Ajindra Kaur at the flat throughout is not in dispute.

Learned Public Prosecutor submitted that at the instance of accused Ajindra Kaur and accused Shambhoo Lal, the weapon of offence and their blood

stained cloths, were recovered. P.W.9-Narendra Singh has confirmed the fact that

the recovered articles were deposited by the Investigating Officer in Malkhana and the factum of the articles recovered being sent in sealed condition to the FSL stands confirmed by deposition of P.W.13-Hansraj, P.W.15-Madan Singh and P.W.16-Dalchand. The factum of deposit of the articles with FSL stands fortified from the report Ex.P/88. Learned Public Prosecutor submitted that the clothes of Ajindra Kaur and Shambhoo Lal were found to be stained with blood of Group A+ i.e. the blood group of the deceased Jasbeer. The weapon of offence knife recovered at the instance of accused Shambhoo Lal was also found stained with blood of Group A+. Learned Public Prosecutor submitted that two blood stained bare foot prints, one almost complete and one incomplete were observed in the bathroom where the dead body was lying and therefore, there being suspicion about the foot prints being of Ajindra Kaur, her feet were also tested for any traces of blood and her feet were found to be positive for benzidine test, which is apparent from the inspection report of the scene of crime Ex.P/79.

16. We have considered the rival submissions and scanned the evidence on record thoroughly.

17. The Medical Board consisting of Dr. Akhilesh Sharma and Dr. A. Ahmed of Maharana Bhupal Hospital, Udaipur conducted autopsy of the dead body of deceased Jasbeer @ Montu. As per Post Mortem Report (Ex.P/28) following ante mortem injuries were found on the person of the deceased :

A+External Injuries

1. Incised wound 7x1.5 cm bone deep at mid point of left parietal region from mid line of scalp. Blood clots present dark brown in colour.
2. Incised wound 7 x 1.5 cm bone deep, 3.5 cm behind injury no.1, parallelly. Blood clots present which is dark brown.
3. Incised wound 3.5 x 1 cm bone deep left side forehead. Bloodclots present dark brown in colour.
4. Incised wound 2.5 x 0.1 cm skin deep on mid line of forehead. Blood clots present dark brown in colour.
5. Two Abrasions 1 x 0.5 cm each on nose. Red seals.
6. Incised wound 8 x 0.5 cm muscle deep left cheek oblique dark brown blood clot present.

7. Incised wound 12 x 0.1 cm skin deep on left cheek posterior of injury no.6 & 7 are interceptory. Dark brown blood clot present.
8. Incised wound 7.2 x 0.2 cm muscle deep left side neck transversely. Blood cloth dark brown in colour present.
9. Incised wound 6 x 0.2 cm skin deep 2 cm above injury no.8 outer fronts of injury no.8 & 9 are interceptory dark brown blood clot present transversely.
10. Incised wound 9 x 0.2 cm skin deep 1.5 cm below injury no.8 posterior points of injury no.8 & 10 are interceptory dark brown blood clot present transversely.
11. Incised wound 10 x 0.2 cm skin deep 2 cm below injury no.10 dark brown blood clot present.
12. Incised wound 1.5 x 0.5 cm skin deep 2 cm above manubrium sternum in mid line of clavicle. Dark brown blood clots present.
13. Incised wound 1.5 x 0.5 cm muscle deep 2 cm above M/B of left clavicle. Dark brown blood clot present.
14. Incised wound 1.5 x 0.5 cm muscle deep 4 cm above M/B Rt. clavicle. Dark brown blood clot present.
15. Incised wound 3.5 x 0.5 cm muscle deep. Left side of scalp of neck. Dark brown blood clot present.
16. Incised wound 3.5 x 0.5 cm skin deep left shoulder. Dark brown blood clots present.
17. Incised wound 1.5 x 0.1 cm skin deep 1 cm medial to injury no.16. Dark brown blood clot present.
18. Incised wound 4 x 0.1 cm skin deep U/B Lt. Arm anterior (sic) Dark brown blood clot present.
19. Incised wound 3 x 0.5 cm muscle deep left elbow. Dark brown blood clot present.
20. Incised wound 1.5 x 0.5 cm muscle deep near injury no.19. Dark brown blood clots present.
21. Incised wound 1.5 x 0.2 cm muscle deep on left elbow near injury no.19. Dark brown blood clots present.
22. Incised wound 4.5 x 1.5 cm muscle deep on M/B Rt. forearm part. Dark brown blood clots present.
23. Stab wound 4.5 x 2 cm bone deep lower medial quadrant of left nipple. Dark

brown blood clots present.

24. Scratch abrasion 5 x 0.1 cm left lower chest and 6 cm below left nipple. Red seals.

25. Stab wound 3 x 1.5 cm cavity deep left hypochondrium 3.5 cm below coastal margin and 18 cm from left nipple. Dark brown blood clots present.

26. Stab wound 1.5 x 0.5 cm cavity deep U/B left lumbar region 4 cm lateral to injury no.25 in same plane. Dark brown blood clots present.

27. Stab wound 2.5 x 1.5 cm cavity deep in left lumbar region 2 cm below injury no.26. Dark brown blood clots present.

28. Stab wound 3 x 1.5 cm cavity deep in left lumbar region 2 cm below injury no.27. Dark brown blood clots.

29. Stab wound 2.5 x 1.5 cm cavity deep in left lumbar region 6.5 cm left lateral to injury no.27 in same plane. Dark brown blood clots present.

30. Stab wound 2.5 x 1.5 cms cavity deep at the junction of body of sternum and xyphoid process. Dark brown blood clot present.

31. Stab wound 3 x 1.5 cm cavity deep in epigastric region. Brown dark blood clots present.

32. Stab wound 3 x 1.5 cm cavity deep in Rt. hypochondrium 2 cm Rt. lateral to mid line of abdomen and 1 cm below coastal margin. Dark brown blood clots.

33. Stab wound 2.5 x 1.5 cms cavity deep 3.5 cm Rt. lateral to injury no.32 in Rt. hypochondrium region 1 cm below coastal margin. Dark brown blood clots present.

34. Stab wound 2.5 x 1.5 cms cavity deep 5.5 cm Rt. lateral to injury no.33 1 cm below coastal margin. Dark brown blood clots present.

35. Stab wound 2.5 x 0.5 cm cavity deep in upper umbilical region just right lateral to mid line of abdomen 7.5 cm above umbilicus. Dark brown blood clot present.

36. Stab wound 3.5 x 1 cms cavity deep mid line of abdomen 5 cm above umbilicus. Dark brown blood clots present.

37. Stab wound 2.5 cm x 1 cm cavity deep 1 cm left lateral midline abdomen 3.5 cm above umbilicus. Dark brown blood clots present.

38. Stab wound 2.5 cm x 1 cm cavity deep in hypogastric region just left lateral to mid line of abdomen 3.5 cms below umbilicus. Dark brown blood clots present.

39. Incised wound 6 x 2 cms bone deep Rt. knee medially oblique. Dark brown blood clots present.

40. Incised wound 4.5 cm x 1.5 cms middle deep in left revalangle parallel to sub coastal margin. Dark brown blood clots present.

41. Stab wound 2.5 x 1.5 cm cavity deep in right lumber region posterior 3 cm below coastal margin. Dark brown blood clots present.

42. Stab wound 2.5 cm x 1.5 cm muscle deep upper right lateral quadrant of Rt. gluteal region. Dark blood clots present.

43. Incised wound 1.5 cm x 0.5 cm bone deep left parietal region of scalp near mid line and left lateral to ant. Fontanelle. Dark brown blood clots present.

44. Incised wound 5 x 1.5 cms muscle deep left little finger posterior lateral. Dark brown blood clots present.

Inj no.1 to 44 are ante mortem in nature and fresh in duration at the time of death. Inj no.5 are caused by blunt weapon and rest injuries are caused by

sharp weapon. Injuries no.23 & 39 are grievous in nature while Injuries no.1, 2, 3, 30, 31 to 34, 41 and 43 are grievous and dangerous to life??

The cause of death was opined to be shock due to ante mortem injuries no.1 to 3, 30 to 34, 41 and 43, which were sufficient to cause death in ordinary course of nature.

18. P.W.-10 Dr. Anish Ahmed while confirming the descriptions of the injuries mentioned in the Post Mortem Report (Ex.P/28) deposed that injury

no.5 was caused by blunt weapon and the remaining injuries were caused by sharp edged weapon. Injury no. 23 & 39 were opined to be grievous in

nature and injuries no.1, 2, 3, 30, 31 to 34, 41 and 43 were opined to be grievous in nature and dangerous to life. The cause of death was deposed to

be injuries inflicted on head, heart and liver. Thus, looking at the nature of the injuries, the death of Jasbeer @ Montu was concededly homicidal in nature.

19. Indisputably, there was no eye witness of the incident and the prosecution case is founded on circumstantial evidence. The prosecution at the

trial placed reliance on following incriminating circumstances so as to establish the guilt of the appellants :

(1) There was a dispute between the deceased Jasbeer with his mother Ajindra Kaur in respect of the property of Late Shri Amarjeet Singh as also on

account of illicit relation of the accused Ajindra Kaur with accused Shambhoo Lal.

(2) On the date of incident Smt. Ajindra Kaur was at her home i.e. the place of occurrence.

(3) The dead body of Jasbeer was found lying in pool of blood in bathroom attached to the bedroom of P.W.2- Harpreet Kaur.

(4) The conduct of Ajindra Kaur after the incident till the breaking of the lock of bathroom by the police, where the dead body of deceased Jasbeer was kept and immediately thereafter, was found suspicious.

(5) At the instance of accused Ajindra Kaur, her blood stained clothes i.e. saree, patikot and blouse, mobile of the deceased and key of the lock put on the bathroom were recovered.

(6) Out of the clothes of the accused Ajindra Kaur recovered as aforesaid, her saree and patikot were found stained with blood of Group B.

i.e. the blood group of deceased.

(7) Two bare foot prints, one almost complete and one incomplete were found on the floor of the bathroom where the dead body was lying, feet of

accused Ajindra Kaur were also tested for any traces of blood, which were found to be positive for Benzidine test.

(8) The blood stains were found at the different places of the house i.e. on the white tile floor at the main entrance of the flat leading into drawing cum

dinning room, on outer side of the door of the bathroom attached with the bedroom reported to be of accused Ajindra Kaur, on the outer side of the

door of the bedroom reported to be of the deceased, on the floor of the bedroom reported to be of the deceased, on a mattress of double bed lying in

the bedroom, on the bed sheet and two pillow covers in the bedroom said to be of P.W.2-Ms. Harpreet Kaur and on the glass of a centre table

present in drawing room, which on chemical testing gave positive Benzidine test.

(9) The car of the deceased, key thereof and mobile of accused Ajindra Kaur were recovered from the possession of accused Shambhoo Lal.

(10) At the instance of accused Shambhoo Lal, blood stain knife and blood stain clothes were recovered. The said articles as per FSL report

(Ex.P/88) were found to be stained with B group blood i.e. the blood group of the deceased.

(11) The finger prints found on the glasses recovered from the place of occurrence matched with the specimen finger prints of the accused Shambhoo

Lal and accused Lavish as per report of the Finger Prints Bureau (Ex.P/87).

(12) The call details alleged to be duly proved, show that the accused Shambhoo Lal and accused Ajindra Kaur indulged in conversation frequently, which is treated to be indicative of the fact that they had illicit relations and were party to a criminal conspiracy.

(13) Accused Shambhoo Lal, Lavish and two others were seen in the car of the deceased at Siphon Chauraha by P.W.6-Asrar Mohammed.

20. It is settled law that before conviction on proof of circumstantial evidence, the following triad tests must be satisfied:-

(i) that the circumstances from which an inference of guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt;

(ii) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and

(iii) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him. (vide Mahmood vs. State of U.P., AIR 1976 SC, 69).

21. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, AIR 1984 SC 1622, the Hon'ble Supreme Court laid down following five golden principles named as *panchsheel* of the proof of a case based on circumstantial evidence :

(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.

22. In *Ramreddy Rajshekhanna Reddy vs. State of Andhra Pradesh*, 2006(3) Supreme, 175, the Apex Court held as under:-

26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.

23. Thus, in the backdrop of principles settled as noticed above, we have to adjudge as to whether the circumstances on which the prosecution relies are established by clear and cogent evidence beyond the reasonable doubt and whether the cumulative effect of the circumstances said to be proved exclude every other hypothesis save the one that the appellants are guilty of the charges imputed.

24. But before dealing with the incriminating circumstances found proved which forms basis of finding of guilt against the appellants, we consider it appropriate to first deal with the contention of the appellants regarding the suspicious conduct of the complainant P.W.2-Harpreet in lodging the FIR belatedly.

25. P.W.2-Harpreet, the sister of the deceased, who was the first person to reach the place of occurrence, from her office R.K.Dotcom, on the fateful day after the incident at 7.30 P.M., deposed that when she reached, her mother Ajindra Kaur was at home. When she asked her mother as to whether her brother Jasbeer came to home for taking meal or not, her mother replied that he came at 4 P.M. for taking meal and thereafter went alongwith his two friends, whom she had never seen before. She told that he has gone to a remote village where mobile network is not available and therefore, his phone is reported to be switched off. According to Harpreet, she tried to contact her brother but phone was switched off. Around 10 P.M., when she came in her room, she found the bathroom locked, on being asked, her mother informed that some goods of Montu are lying there, he has locked the bathroom and the keys are with him. On seeing her giving a call to the police, her mother attacked her, tried to bite her on the left arm. Her mobile was snatched by her mother Ajindra Kaur.

Thereupon, she locked the flat from outside and ran away. She went downstairs and asked the flat owner Mr. Nasa (P.W.5-Mr. Harish Nasa) to permit her to give a call to police but she was not permitted saying that it is her internal family matter. She also asked the neighbour residing just opposite to permit her to contact the police on phone but they also declined. She went downstairs where a Chowkidar was there and by his side, a student was standing, she dialed the number to call the police by borrowing the phone from the student, in the meantime, Hawk reached there. When she was indulged in talking with the police, her mother Ajindra Kaur also reached there, as the flat bolted from outside, was opened by someone. The mother instructed her to send the Hawk back saying that they will solve their family matter on their own. When her mother told her to go upstairs, she asked her mother to return her mobile which was returned to her and thereafter, she again informed the police on telephone that this is their internal matter which they will solve and the Hawk was also sent back. She returned with her mother to their flat. In the night, the mother asked Harpreet to sleep in her room but she declined and said that she would sleep in her own room. She went to the room and bolted the door from inside and waited for her brother whole night, she could not sleep. In the morning, she contacted her brother's friend Suresh on mobile phone, who told that Montu was with him yesterday till 2 P.M., then he came to home for lunch and thereafter, they did not meet. When Suresh reached her home, she apprised him that the bathroom is locked from outside and Montu has not returned home. Suresh noticed that blood stains were present outside the bathroom and there were the blood drops in the gallery as well. In the daylight, they noticed that white floor was cleaned by someone. She deposed that she contacted police on telephone, the police came around 11 A.M. and broke open the bathroom lock, the dead body of Montu was lying in bathroom in pool of blood, Montu was murdered by someone by sharp edged weapon. In cross examination, she deposed she had informed the Control Room on phone that her mother is quarreling with her. She deposed that she had given a call to Montu's friends Suresh and Harish but Suresh's mobile was switched off. She continued to call her brother on mobile whole night with some time gap. She further deposed that her mother had already apprised her that Montu has gone to village and would not return early and

therefore, when Montu did not return even after 10 P.M., she did not inquire about him from mother.

26. The sequence of the event narrated by P.W.2-Harpreet as aforesaid is further confirmed by P.W.3-Pratap Singh, who deposed that on the fateful

day, he was on duty on Hawk No.3 and he had received a wireless message from Control Room that there was a call from a lady named Harpreet

residing in Galaxy Apartment complaining about quarrel with her mother. When he reached Galaxy Apartment, a lady standing there disclosing her

name as Harpreet informed that she had given a call to Control Room as her mother was quarreling with her and when she asked her about her

brother Montu, she informed that he had gone out with his two friends and on inquiry being made about the lock on the bathroom attached to the

bedroom, she said that the key is with Montu and he will open the door. When she insisted to break open the lock, her mother entered into quarrel,

tried to bite her and snatched her mobile. He further deposed that then accused Ajindra Kaur came there and while returning the mobile to Harpreet,

said that they will solve their dispute and the complainant Harpreet also stated that this is their internal matter and they will solve it and thereafter, both

of them went to their flat. P.W.5-Harish Nasa in his statement confirmed the deposition of the complainant to the extent that on that day and time, the

complainant Harpreet had come to their home and said that she had a quarrel with her mother and she intends to give a phone call to the police, which

was not permitted and thereafter she had gone to yet another neighbour.

27. The appellant Ajindra Kaur and the complainant Harpreet are mother and daughter. It goes without saying that motherdaughter relationship is the

most powerful and closest human relationship and therefore, on Ajindra Kaur explaining that Montu has gone alongwith his friends to a remote village

and may not return in the night and there will be no network available in his mobile phone, there was no reason why she would not believe her mother.

That apart, in human relationship, nobody would easily think of the possibility of mother killing her son and therefore, it is quite possible that despite

existence of some suspicious circumstances, the thought of any untoward incident with her brother did not occur to P.W.2-Harpreet. It has come on

record that it is only in the day light when Suresh Meghwal came to the house, he noticed the blood stains and the cleaning of the floor and

immediately thereafter, the police was informed. It is pertinent to note that even in the night after 10 P.M. when P.W.2 Harpreet inquired about the lock being put on the bathroom and her mother quarrelled with her and even tried to bite her and then she tried to contact the police but her mobile was snatched away by her mother. Later, she went out of the flat and contacted the police as narrated in her statement before the court but again, on her mother coming to the place, at the time when the Hawk police reached there, she looking to the relationship, on her mother's instructions, told police that it is their internal family matter and they will solve it. Thus, on the facts and in the circumstances of the case, keeping in view the relationship of mother and daughter, ignoring some suspicious circumstances existing, in absence of confirmation of untoward incident having been occurred, the conduct of P.W.2-Harpreet deferring the lodging of the FIR, cannot be considered to be of such a nature so as to create doubt about the genuineness of the prosecution story. In this view of the matter, we are of the considered opinion that the delay occurred in lodging the FIR is not fatal to the prosecution case. The FIR registered in the afternoon on 3.3.07 was sent to the concerned Magistrate on 4.3.07 and thus, there is no such inordinate delay in forwarding the FIR, which could be considered fatal to the prosecution case.

28. The prosecution has sought to establish the motive behind the commission of crime on the basis of the existence of illicit relations of the appellant

Ajindra Kaur with the appellant Shambhoo Lal and further the dispute regarding the deceased Jasbeer and his mother appellant Ajindra Kaur in

respect of the property of late Shri Amarjeet Singh. In this regard, the prosecution has examined P.W.2-Harpreet Kaur, who has deposed that her

mother Ajindra Kaur had illicit relations with Manager of their transport concern and she and Montu had seen him visiting the house very often. She

deposed that Montu had got checked the call details of their landline number wherein maximum calls were shown to be made on Shambhoo's

number and Shambhoo also used to call many times and she had warned him not to make the calls. She deposed that she and Montu come to know

about the illicit relations in 2007 after death of their father. She deposed that when she was at Delhi, her mother while throwing chilli powder in the

eyes of Montu, attacked on his head by hammer. Montu had doubt that their father was murdered as her mother did not permit autopsy of the body

being conducted. Montu wanted to get the flat transferred in his name and his mother had assured that after Holi, she would get the flat transferred in

Montu's name. Since Montu was knowing about his mother's illicit relations with Shambhoo, her mother was annoyed with him. The

suggestion of the defence that despite her warning to Shambhoo, he used to come to the house, was accepted by the P.W.2-

Harpreet as correct. However, she categorically deposed that she had never seen Shambhoo and her mother in compromising position. She deposed

that she had seen Shambhoo entering Mahakaleshwar Temple while holding her mother's hand. She further deposed that she had seen Shambhoo

Teli and her mother together at home many times and on her reaching there, he would leave the house.

29. It is noticed that complainant Harpreet has deposed that her mother had illicit relations with accused Shambhoo Lal who is employed as Manager

in their transport concern and since Jasbeer was knowing about the factum of illicit relationship that become the cause of dispute and therefore, Smt.

Ajindra Kaur while hatching the conspiracy with Shambhoo Teli and others caused death of Jasbeer. To the contrary, accused Smt. Ajindra Kaur and

Shambhoo Lal Teli by way of cross examination and their statements under Section 313 Cr.P.C., sought to establish that P.W.2-Harpreet was

studying at Delhi and when she was brought back to Udaipur, had developed relationship with Suresh Meghwal and some of the police officers and

for this reason, out of enmity with her mother and brother, she killed her brother and falsely implicated the mother in the case. All suggestions of the

prosecution in cross examination, have been emphatically denied by P.W.2-Harpreet and there is no evidence led on behalf of the defence to establish

the allegations levelled against P.W.2Harpreet as aforesaid. Even appellant Ajindra Kaur also did not appear as witness in defence to prove the

allegations that her daughter was a lady of easy virtues. Though except the deposition of P.W.2-Harpreet, there is no other evidence brought on

record by the prosecution to prove the motive as alleged but in our considered opinion, keeping in view the facts and circumstances found proved as

discussed hereinafter, we do not find any reason to disbelieve the testimony of P.W.2-Harpreet in this regard.

30. The factum of appellant Ajindra Kaur being present at home is not in dispute. As per deposition of P.W.2-Harpreet Kaur, when she returned

home around 7.30 P.M. and asked her mother as to whether her brother Montu came to home for taking meal or not, her mother replied that Montu

came at 4 P.M. for taking meal and thereafter went alongwith two friends to a remote village. It is pertinent to note that the deposition of Harpreet as

aforsaid regarding the response of her mother has been accepted as correct by appellant Ajindra Kaur in her examination under Section 313 Cr.P.C.

in terms that the facts regarding P.W.2-Harpreet coming home around 7.30 P.M., asking about Montu and her response regarding his having gone out

with the friends, as correct. This position is not even disputed by the learned counsel appearing for the appellant Ajindra Kaur and thus, it can be

safely concluded that on the fateful day, the appellant Ajindra Kaur was at home. Though, Ajindra Kaur has taken the defence that from 4 to 6.30

P.M. she was not at home rather she was at temple but to prove this fact i.e. the plea of alibi, no evidence was led by her. Even in her examination

under Section 313 Cr.P.C., she has not disclosed as to she had gone to which temple and what is the distance of the temple from the house etc. Thus,

on the facts and in the circumstances of the case, the presence of Ajindra Kuar at her home, which is otherwise natural, cannot be disbelieved in

absence of any other material on record showing her presence at the relevant time somewhere else.

31. Coming to the conduct of Ajindra Kaur after the incident till the breaking of the lock of the bathroom by the police and immediately thereafter,

admittedly, when P.W.2-Harpreet returned home around 7 P.M., Ajindra Kaur apprised her that Jasbeer has gone to a remote village with his friends

and his mobile shall remain switched off. As per deposition of P.W.2-Harpreet on her insisting upon her mother to open the lock of the bathroom, she

replied that the keys are with Montu @ Jasbeer and even attempted to bite her. It is admitted by the Ajindra Kaur in her examination under Section

313 Cr.P.C. that on call, Hawk had come to their house. This fact further stands fortified by deposition of P.W.-3 Pratap Singh, a member of Police

Hawk. Again after return of the Hawk on P.W.-2 Harpreet Singh saying that their internal family dispute shall be resolved by them, she insisted upon

P.W.2-Harpreet to sleep in her room instead of Harpreet's own room. The factum of P.W.-2 Harpreet going to Harish's house to give a call

to the police is also not disputed by Ajindra Kaur, which further indicates towards the truthfulness of the statement of P.W.2-Harpreet that she was

not permitted to give a call to the police from the telephone at home and her mobile phone was snatched by Ajindra Kaur. On the next day, on the police breaking open the lock of the bathroom, the dead body of Montu was found lying there in pool of blood, the fact which is also not denied by the appellant Ajindra Kaur in her statement under Section 313 Cr.P.C. Ajindra Kaur was at home, however, though knowing fully well about the dead body being kept in bathroom, she neither informed the police about the incident nor narrated the incident if occurred in the manner different than projected by the prosecution. Further, after police coming to the occurrence and having recovered the dead body of Jasbeer from the bathroom, Ajindra Kaur remained unaffected by death of her son and retired to her own room. Though, the prosecution has established that Smt. Ajindra Kaur was at home only, she denied her presence at home during the period from 4 PM to 6.30 PM but remained silent about the sequence of the event occurred after she returned home. She did not give any explanation as to how the dead body of deceased Jasbeer reached to bathroom in the house in her own possession. Thus, the suspicious conduct of Ajindra Kaur throughout also indicates towards her knowledge about the incident occurred and her own involvement in the commission of crime.

32. It is also not in dispute that on the next day on the telephonic call, the police reached the place of occurrence, broke open the lock of the bathroom wherein the dead body of Jasbeer @ Montu was lying in pool of blood. In the first instance, the police seized lock of the bathroom vide Ex.P/1. There were stains of blood on the glass top of the table, which were lifted by the police by use of cotton. The table top and the glasses lying thereon, keeping in view the possibility of fingerprints, were packed safely and seized vide Ex.P/2. The blood stains were found on the mattress available in the bedroom and therefore, the portion of the mattress having blood stains was cut in round and seized vide Ex.P/3. The cloth tied on head of the deceased was seized vide Ex.P/4. The bed sheet having blood stains, which was wet on account of being washed, was seized vide Ex.P/5 and the tile of the bathroom wherein the dead body of Jasbeer was found, was seized vide Ex.P/6. The blood stains on floor and the doors were lifted and seized vide Ex.P/7. Blood stained napkin lying in balcony of the flat was seized vide Ex.P/9. Blood stain hair on chest, palm and back of the deceased Jasbeer

were seized vide Ex.P/11. The seizure vide Ex.P/1 to P/7 and Ex.P/9 & Ex.P/11 stands confirmed by deposition of P.W.1-Vijay Khatri, whose credit

is not impeached in cross examination in any manner.

33. Keeping in view the facts and the circumstances of the case and existence of a strong suspicion, Ajindra Kaur and Shambhoo Lal were arrested

by the police vide Memos Ex.P/73 & Ex.P/74 respectively. Smt. Ajindra Kaur furnished information to the police under Section 27 of the Evidence

Act, vide Ex.P/75 that the clothes which she was wearing at the time of incident, Nokia mobile phone of the deceased and the key of the lock put on

the bathroom from where the dead body of Jasbeer was recovered, were lying wrapped in footmat in drawer of her almirah. Yet another information

was furnished by Ajindra Kaur for verification of the place of occurrence vide Ex.P/76. Pursuant to the information furnished as aforesaid, at the

instance of the accused Ajindra Kaur a key of the lock put on the bathroom and mobile phone of deceased Montu @ Jasbeer were recovered vide

Ex.P/14 and a footmat and clothes of Ajindra Kaur i.e. a saree, patikot and blouse were recovered vide Ex.P/16. The recovery of said articles stands

confirmed by deposition of the witness P.W.6-Asrar Mohd., whose credit is also not impeached in any manner in the cross examination.

34. Accused Shambhoo Teli furnished the information regarding weapon of offence, the knife, his blood stained clothes, the car of deceased Montu @

Jasbeer, key of the car and mobile phone of accused Ajindra Kaur vide Ex.P/77. Pursuant thereto blood stained knife, Nokia mobile phone and key of

the car were recovered vide Recovery Memo Ex.P/20. The blood stained clothes of the accused i.e. a bushirt and a pant were recovered vide

Ex.P/21 and the car TATA Indica of the deceased bearing registration number RJ-27CA-1052 was recovered vide Ex.P/22.Â The recoveries made

as aforesaid stand confirmed by deposition of the witness P.W.-6 Asrar Mohd.

35. It is contended on behalf of the appellant Shambhoo Lal that the list of the articles sent for examination to FSL were not prepared. A perusal of

forwarding letter (Ex.P/46), whereby the articles were sent for examination to the Additional Director, Regional Forensic Science Laboratory,

Udaipur, reveal that the list of the articles was accompanying the said communication. As a matter of fact, the list containing the details of the articles

with marks thereon sent to FSL is available on record of the trial Court, however,

it appears that while placing the documents marked as Ex.P/46 at the appropriate place, the same was left out. Be that as it may, the verification of marks on the various articles stand confirmed by Malkhana Register (Ex.P/27A) as well.

36. Further, P.W.9-Narendra Singh, Head Constable, who was Malkhana Incharge, has deposed that on 3.3.07, 19 articles seized were handed over by P.W.21-Ranvijay Singh, which were deposited in the Malkhana and the entries were made in Malkhana Register (Ex.P/27A) at Serial No.206 from â??A to Bâ??. He further deposed that on 6.3.07, 21 articles were handed over to him by P.W.21-Ranvijay Singh, the Investigating Officer, which were deposited by him in Malkhana and the entries thereof were made in Ex.P/27 at Serial No.208 from â??C to Dâ??. As he was on leave, the articles were sent to FSL by Malkhana Incharge P.W.16-Dalchand.

37. P.W.16-Dalchand deposed that on 19.5.07, 9 articles taken out of from Malkhana were handed over to P.W.15-Madan Singh, Constable, for depositing the same with the FSL and after depositing the articles the receipts issued by FSL were produced by P.W.15-Madan Singh, the entries whereof is made in Malkhana Register (Ex.P/27A) from â??O to Pâ?? and â??Q to Râ??. The entries contained his signature from â??S to Tâ?? and that of P.W.15-Madan Singh from â??U to Vâ??. On the same day, seized articles were handed over to P.W.13-Hansraj Constable for depositing the same with FSL, who had also produced the receipts issued by FSL, the details whereof was entered in Malkhana Register (Ex.P/27A) from â??W to Xâ??. He further deposed that the entries made bear his own signature and the signature of Hansraj at the place â??A to Bâ?? and â??C to Dâ?? respectively. He further deposed that on 25.5.07, a key of the car was recovered at the instance of accused Shambhoo Lal Teli vide Ex.P/52, which on being operated was found to be of the car belonging to Montu recovered from Shambhoo Lal lying at the Police Station.

38. P.W.15-Madan Singh deposed that the articles seized handed over by P.W.16-Dalchand were deposited by him with the FSL vide forwarding letter (Ex.P/48) issued by the S.P. Office, which contains his signature from â??A to Bâ??. The receipt issued by the FSL were Ex.P/50 and P/51.

In the first forwarding letter (Ex.P/48), there was reference to 2 articles and in the second forwarding letter (Ex.P/49), there was reference of 7

articles. He further deposed that the receipt issued by the FSL were handed over by him to the Malkhana Incharge.

39. Similarly, P.W.13-Hansraj deposed that on 19.5.07, 25 articles in sealed condition were handed over to him by Malkhana Incharge P.W.16-

Dalchand for depositing the same with FSL, which were deposited by him with the FSL vide forwarding letter (Ex.P/46) issued by the S.P. Office. On

depositing the articles, the receipt (Ex.P/47) issued by the FSL was handed over by him to the Malkhana Incharge.

40. A perusal of the deposition of P.W.9-Narendra Singh, P.W.16Dalchand, P.W.13-Hansraj and P.W.15-Madan Singh reveal that in cross

examination of these witnesses, nothing has come on record reflecting that the articles recovered/seized were not sent to the FSL in sealed condition

and thus, the contentions raised on behalf of the appellant Shambhoo Lal in this regard are devoid of any merit.

41. As per the FSL Report (Ex.P/88) out of the articles recovered at the instance of accused Ajindra Kaur vide Ex.P/16, footmat, saree and patikot

were found stained with the blood of Group A i.e. the blood group of deceased Jasbeer. That apart, blood stained pieces of tiles, blood stained

piece of mattress, blood swabs of the blood stains lifted from the floor of guest room, glass of the centre table and from the door of bathroom of

Ajindra Kaur, blood stained napkin and pant of the deceased were found stained with blood of A group.

42. As per FSL report (Ex.P/88), the blood stained knife, bushirt and pant recovered at the instance of accused Shambhoo Lal were also found stained

with the blood of A group i.e. the blood group of deceased Jasbeer.

43. It was contended on behalf of the appellant Shambhoo Lal that as per FSL report (Ex.P/88), one knife and one katar were sent for examination

whereas, no recovery of katar was ever made. A perusal of the record reveals that katar was recovered at the instance of accused Lavish

Kumar, who being juvenile was separately tried by the Juvenile Court. The katar recovered deposited in Malkhana is specifically entered in

the Malkhana Register (Ex.P/27A) at entry no.9. Suffice it to say that article katar marked as U1 sent to FSL was recovered at the instance

of accused Lavish and therefore, nothing turns on the question that the said recovery was not proved by the prosecution in the instant case.

44. It was further contended by the learned counsel for the appellant that key of the car was recovered at the instance of accused Shambhoo Lal

after a period of two months. As per P.W.6 Asrar Mohammad on 2.3.07 around 7 P.M. when he and Suresh were coming from the side of Siphon

Chaurah, they had seen Shambhoo Teli and Lavish accompanied by two more persons going in a car bearing No. RJ-27-CA-1052, which was owned

by Montu. The car was recovered at the instance of accused Shambhoo Lal on 6.3.07 vide Ex.P/22. The recovery thereof also stands established by

the deposition of P.W.6-Asrar Mohammad and thus, recovery of key at a later stage after two months at the instance of accused Shambhoo Lal is

also not of much consequence.

45. So far as call details are concerned, the prosecution has produced the call details of mobile no. 9352523964 issued in the name of Amarjeet Singh

Malik by Reliance Infocom Limited (Ex.P/72) and mobile no. 9928544890 issued in the name of the appellant Shambhoo Lal Teli by Bharti Hexacom

Limited, AIRTEL (Ex.P/25), which bear signatures of the authorities concerned of Reliance Infocom Limited and Bharti Hexacom Limited, AIRTEL.

To prove the details furnished, the prosecution has produced P.W.7 Dushyant Singh, Administrative Officer, AIRTEL and P.W.18-Juber Khan, who

was employed at the relevant time with Reliance Mobile Branch, Sardarpura, Udaipur for examination before the court. The electronic record of call

details generated by the computer were duly signed by the competent authorities of the respective service provider companies, which further stands

proved by deposition of the competent authorities before the court. But in any case, the call details only indicate that there were frequent

conservations between the persons using the mobile numbers 9352523964 and 9928544890 during the period to which the call details relate and cannot

be considered as direct link evidence connecting the appellants with commission of crime.

46. Coming to the incriminating circumstance against the appellant Shambhoo Lal regarding his finger prints being found on glass/table lying in the

drawing room, the first objection raised on behalf of the appellant is that the glasses were not there on the table inasmuch as, in the photographs taken

by the FSL team (Ex.D/3), the same were not visible on the table. There is nothing on record as to exactly at what time, the photos were taken by the

FSL team. It is pertinent to note that in the site plan (Ex.P/10), the availability of the four glasses on the round table lying in the drawing room is shown

and further it is specifically mentioned therein that the same are being seized separately and thereafter, the seizure memo (Ex.P/2) was prepared at

3.40 P.M. The glasses and the table top were separately seized, the details whereof have also been specifically set out therein. Merely because,

Ex.P/2, the seizure memo of glasses and table top was prepared on the same day at 3.40 P.M., no inference can be drawn regarding the said

evidence being planted evidence. Further, the seizure of the aforesaid articles from the place of occurrence is supported by the deposition of motbir

P.W.1-Vijay Khatri. The credit of the said witness in respect of the seizure of the aforesaid articles is not impeached in any manner in the cross

examination. In this view of the matter, in the considered opinion of this court, the findings arrived at by the trial court in this regard cannot be faulted

with.

47. As per deposition of P.W.9-Narendra Singh, Malkhana Incharge, on 3.3.07, 19 articles seized in the case were handed over by the Investigating

Officer Ranvijay Singh to him for depositing in Malkhana, which were entered by him in Ex.P/27A, Malkhana Register at Serial No.206 from A to

D. It is noticed that at Serial No.206, the glasses and table top deposited in Malkhana are specifically entered at entry no.16. Further, there is

an entry made on 6.3.07 that the said articles were handed over to P.W.14Bhagwat Singh for recovery of the chance prints and the same were kept

safe after the chance prints being recovered.

48. P.W.14-Bhagwat Singh has specifically deposed that the glass and the table top were handed over to him in sealed condition and the same were

deposited with the Malkhana after recovery of the chance prints. However, he deposed that all the four glasses were packed in one bag. Out of four

glasses, the chance prints were found on three glasses and the table top.

49. P.W.17-Rajendra Sharma, Senior Photographer, Finger Prints Bureau, Jaipur deposed that on 23.3.07, the photographs of the chance print

developed were taken by him which were marked as A to A/16. He further deposed that before photography, the said articles were safely

kept in Malkhana and were taken out of Malkhana in presence of SHO P.W.21-Ranvijay Singh. The memo of photography was prepared as Ex.P/45.

A perusal of Ex.P/45 reveals that out of three glasses on which chance prints were found, on one glass three chance prints were found which were marked as A/1 and A/2, on second glass one chance print was found which was marked as A/3 and on third glass, two chance prints were found which were marked as A/4 and A/5. The chance prints found on centre table were marked as A/6 to A/16. The negatives and photographs of the chance prints taken as aforesaid were exhibited in evidence as Ex.P/53 to P/71.

50. It is pertinent to note that as per the report submitted by the Director, Finger Prints, chance prints found on the table top marked as A/8 and A/9 were found similar and identical with the specimen right middle finger print (S/4) and right ring finger print (S/5) respectively of the accused appellant Shambhoo Lal and thus, the appellant Shambhoo Lal is not adversely affected in any manner even if some infirmity has crept in with regard to seizure of glasses and recovery of the chance prints thereon.

51. The next objection raised by the learned counsel for the appellant Shambhoo Lal regarding the finger prints evidence is that the specimen finger prints of accused Shambhoo Lal and others were not taken in presence of the Magistrate, which is violative of the provisions of Section 5 of Identification of Prisoners Act (for short the Act of 1920).

52. In Shankaria vs. State of Rajasthan, AIR 1978 SC 1248, the Hon'ble Supreme Court while dealing with the contention that in view of Section 5 of Act of 1920, it was incumbent on the police to obtain the specimen thumb impression of the appellants therein before the Magistrate, the court observed that the contention appears to be misconceived because in the State of Rajasthan, the police were competent under Section 4 of the Act of 1920, to take the specimen finger prints of the accused and it was not necessary for them to obtain an order from Magistrate for obtaining such specimen finger prints.

53. In Mohd. Aman's case (supra) relied upon by the learned counsel for the appellants, where there was a missing link between the identity of the articles seized and identity of articles examined by the Finger Prints Bureau and non production of glass tumbler during the trial, the evidence adduced in proof of the said incriminating circumstances was not accepted by the Supreme Court. The court found it unsafe to accept the evidence

led also for the reason that the sample of the foot prints were not taken before a Magistrate. However, at the same time, the court observed :

“...Apart from the above missing link and the suspicious circumstances surrounding the same, there is another circumstance which

also cast a serious mistrust as to genuineness of the evidence. Even though the specimen finger prints of Mohd. Aman had to be taken on a number of

occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the

Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take finger prints of the accused but to dispel any

suspicion as to its bonafides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under

the order of a Magistrate. The other related infirmity from which the prosecution case suffers is that the brass jug, production of which would have

been the best evidence in proof of the claim of its seizure and subsequent examination by the Bureau, was not produced and exhibited during trial - for

reasons best known to the prosecution and unknown to the Court. For the foregoing discussion we are unable to sustain the convictions of Mohd.

Aman.” (emphasis added)

54. In Sunder’s case (supra), the question involved was with regard to footprints being not lifted in presence of the Magistrate, this court while

dealing with Rule 6.26 of Rajasthan Police Rules 1965 which specifically deals with “Importance of Footprints and Track Evidence”, observed

that as per Rule 6.26 (3), prior to taking of impression of the foot prints and before making a mould, the footprints found on scene of crime must be

pointed out to a reliable witness and further as per Rule 6.26 (3) (c), the moulds of foot prints should be made either in front of Magistrate or in front

of witnesses and accordingly, in the said case where foot prints were not lifted from place of occurrence in front of Magistrate and were rather lifted

in front of son of the deceased, not an independent eye witness, were not believed. The Court further observed that Section 5 of the Act of 1920,

prescribes manner in which the measurement of non convicted person is to be taken and therefore, before a foot prints of an accused can be taken

during the course of investigation, the procedure laid down under Section 5 has to be followed. Similar view was taken by a Bench of this court in

Raju's case (supra). But, it appears that the effect of the provisions of Section 4 of the Act of 1920 as interpreted by the Hon'ble Supreme

Court in Shankariya's case and Mohd. Aman's case (supra), was not specifically brought to the notice of the Court.

55. Apparently, the provisions of Section 4 & 5 of the Act of 1920, operates in different fields. Section 4 of the Act of 1920 deals with taking of

measurements etc. of non convicted person which mandates that any person who has been arrested in connection with an offence punishable with

rigorous imprisonment for a term of one year and upwards shall if so required by the police allow his measurements to be taken in prescribed manner.

The said provision does not envisage to obtain an order from a Magistrate or for measurements being taken in presence of the Magistrate. Whereas,

Section 5 of the Act of 1920 deals with the power of the Magistrate to order a person to allow his measurements or photographs to be taken where he

is satisfied that for the purposes of an investigation or the proceedings under the Code of Criminal Procedure, it is necessary to permit such

measurement being taken.

56. Suffice it to say that Section 4 of the Act of 1920 mandates the person arrested in connection with an offence punishable with rigorous

imprisonment for a term of one year or upwards to allow his measurements be taken in prescribed manner by a police officer if so required, and such

power of the police has been recognized by the Hon'ble Supreme Court as well as noticed herein above. Moreover, in the instant case, where the

police officer was allowed to take required finger prints inter-alia by the appellants herein, the provisions of Section 5 of the Act of 1920 or Section

311A of the Cr.P.C. inserted w.e.f. 23.6.06 are not attracted. To put it in other words, the provisions of Section 5 which empowers the Magistrate to

direct any person arrested in connection with investigation or proceedings under Cr.P.C. to allow his measurements or photographs to be taken, in no

manner precludes the police officer from taking the measurements exercising power under Section 4 of the Act of 1920 without obtaining the order

from the Magistrate as contemplated under Section 5 of the Act of 1920. The words 'prescribed manner' used in Section 4 of the Act of 1920

cannot be construed to mean that for taking measurements, the procedure as contemplated under Section 4 of the Act of 1920 has to be followed. But

certainly, it is desirable to invoke the provisions of Section 5 of the Act of 1920 to exclude the possibility of any kind of suspicion regarding genuineness of the measurements taken.

57. In this view of the matter, in the considered opinion of this Court, merely because the order was not obtained by the police from the Magistrate for taking the specimen finger prints of the appellants and the same were taken by the police in absence of Magistrate, the same cannot be discarded as unreliable.Â

58. The contention of the learned counsel appearing for the appellants that the finger prints of accused Ajindra Kaur and maid who were at the home were not taken, is factually incorrect. A perusal of the record reveals that besides Shambhoo Lal, the finger prints of Ajindra Kaur, Lavish and Harpreet were also taken, which are there on record as Ex.P/80, P/82, P/83 & P/84 respectively and the same were forwarded for examination to the Finger Prints Bureau. In this regard, the report of the Finger Prints Bureau (Ex.P/87) is self explanatory.

59. It was further contended on behalf of the appellants that two bare foot prints, one almost complete and one incomplete were found on the floor of the bathroom, which were not lifted by the prosecution and thus, the best evidence, which could have clinched the issue was withheld by the prosecution. It is noticed that on the bare foot prints being found as aforesaid on the floor of bathroom, the feet of accused Ajindra Kaur were tested for any traces of the blood, which were found to be positive for Benzidine test.Â It is true that foot prints found could have been lifted by the police but then, the aforesaid omission in the prosecution case is also not of much consequence inasmuch as, on the basis of chain of circumstances proved, the guilt of the appellants herein even otherwise stands established beyond reasonable doubt.

60. In view of the conclusions arrived at as aforesaid in respect of various incriminating circumstances as discussed above, we are of the considered opinion that circumstances established beyond reasonable doubt form chain of events, which points only towards the guilt of the accused appellants and thus, learned trial Judge has committed no error in convicting and sentencing the appellants as indicated above.

61. The appeals have no merit, the same are therefore, dismissed.