

PETITIONER:
SURINDER PAL JAIN

Vs.

RESPONDENT:
DELHI ADMINISTRATION

DATE OF JUDGMENT 05/03/1993

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
SINGH N.P. (J)

CITATION:
1993 AIR 1723 1993 SCR (2) 226
1993 SCC Supl. (3) 681 JT 1993 (2) 206
1993 SCALE (1) 792

ACT:
Indian Penal Code, 1860:
Sections 203 and 302--Appellant accused of murdering his wife--No eye witness of occurrence--Prosecution case based on circumstantial evidence--Disclosure statement of accused and recovery of ornaments of deceased in pursuance thereof--Dogs of dog squad pointing to appellant--Sessions Court acquitting accused--High Court setting aside acquittal and convicting appellant--Held when case based on circumstantial evidence--Motive assumes pertinent significance--Finding of guilt recorded by High Court not sustainable in law.

HEADNOTE:
The appellant and his wife went to sleep in the back verandah of their house on the fateful night of 25th/26th July, 1976 while the appellant's brother alongwith his wife and children went to sleep separately in their bed-room in the same house. The Police Control Room was informed over the telephone by a neighbour Sulekh Chand Jain at 4.55 A.M. that an incident had taken place in the house and on receiving the telephone message, the S.I. made a record of it in the daily diary and passed on the information to the duty officer at the police station, who deputed an A.S.I. to proceed to the spot for investigation. After reaching the spot, the A.S.I. informed the police station on telephone that a murder had taken place. The information was recorded and the SHO immediately left for the spot alongwith S.I. The police party arrived at the spot at about 5.35 a.m. and took charge of the investigation. The appellant was present near the dead-body and on interrogation, the appellant informed the police party that his brother and family had retired for the night in their bed room at about 10.00 P.M. and he alongwith his wife had slept in the back verandah, and that when he got up at 3.45 A.M. he noticed that his wife had been murdered by somebody by strangulation while committing the theft of the gold chain, eartops and golden bangles that she was wearing.

The crime team as well as the dog squad were summoned. Both the
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dogs of the dog squad were first let loose and after picking up the smell from the lock lying in the corner of the back courtyard and from the spot, went to the room where the appellant was sitting and each of the dogs pointed towards him by turn. That raised a suspicion against the appellant. The SHO then asked the appellant to remove his shirt and found that the appellant had injuries in the nature of bruises etc. on the front part of his, body, on the chest, as well as on his back, The appellant was thereafter taken for further interrogation to the police station, and in the presence of the Sub Inspector, PWI and PW2 he made a disclosure statement to the effect that he had concealed the golden chain and the bangles in his bathroom and in pursuance of the disclosure statement, the appellant led the police party to the bathroom of his house and after removing the cover from the drain hole, took out the golden chain and the bangles and handed them over to SHO. The appellant was placed under arrest. After the disclosure statement was made the case which was originally registered under Section 460 IPC was converted into one under Section 302 read with section 203 IPC.

After completion of the investigation, the challan was filed against the appellant and he was tried for offences under Section 302/203 IPC in the Court of the Additional Sessions Judge. The prosecution sought to establish the case against the appellant on the basis of circumstantial evidence, there being no eye-witness of the occurrence. The circumstances set up by the prosecution were : (i) information to the police at 4.55 A.M given by a neighbour and not the appellant; (ii) that information that a murder had taken place was not given but intimating the happening of an incident; (iii) The accused having slept at night in the verandah with tile deceased after having locked the collapsable door of the verandah from inside; (iv) The deceased and accused were last seen together; (v) The dogs of the dog squad having pointed out to the accused after picking up scent from the lock; (vi) The ornaments which were on the person of the deceased while she was sleeping, and found missing when she was discovered dead, were recovered from the drain hole of the bath room attached to the bed room of the accused in consequence of and in pursuance to the disclosure statement made by the accused; (vii) injuries found on the person of the accused in the nature of abrasions, contusions, and (viii) the accused having given false information to the police by means of his statement Ext. P5.

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The Sessions Judge after carefully analysing the aforesaid circumstances held that the prosecution has entirely failed to prove any of the circumstances set up against the accused, much less to establish the chain of circumstances, so as to bring out a nexus between the crime and the accused, and acquitted the appellant for the offences under Section 302/203 IPC.

The State appealed to the High Court and a Division Bench reversed the order of acquittal of the appellant. The High Court held that the circumstances formed a chain and the sequences were so complete by themselves that one was left in no manner of doubt that the appellant alone had committed the crime. The appeal was allowed, the order of acquittal was set aside, and the appellant was sentenced to undergo rigorous imprisonment for life under Section 302 IPC, and also to undergo rigorous imprisonment for a period of one year under Section 203 IPC.

In the appeal to this Court it was contended on behalf of

the appellant that the approach of the High Court was totally erroneous and that a well considered and well reasoned judgment of the Trial Court was upset by the High Court by drawing inferences which were not available from the record and by ignoring material discrepancies and infirmities in the prosecution evidence, which not only did not establish various circumstances but which also showed that the chain of circumstantial evidence was wholly incomplete. It was further contended that the appellant had been roped in on the basis of misguided suspicion and that the circumstances relied upon by the prosecution were not exclude the hypothesis, other than that of the guilt of the appellant. The appeal was contested by the State submitting that some of the circumstances like the pointing out of the appellant by the dogs of the Dog Squad, the disclosure statement and the recovery of ornaments as a consequence thereof, and the presence of injuries on the person of appellant, were of such a conclusive and clinching nature that they left no doubt that the appellant had committed the crime, and this was fortified when the appellant had made the attempt to mislead the investigating officer by giving a false version with a view to screen himself.

Allowing the appeal, and setting aside the judgment of the High Court convicting the appellant, this Court,

HELD : 1. The High Court did not properly appreciate the prosecution-

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tion evidence while reversing the well considered judgment of the Sessions Judge. On independent appraisal of the evidence, the prosecution evidence relating to the disclosure statement and the recovery of ornaments is not only discrepant and contradictory but also suffers from glaring infirmities and improbabilities rendering it unsafe to rely upon the same.

[244H, 245B]

2. The Sessions Judge was perfectly justified in acquitting the appellant of all the charges and the reasoning given and the findings recorded are sound, cogent and reasonable. The High Court was not justified to set aside those findings on surmises and conjectures. The finding of guilt recorded against the appellant by the High Court is not sustainable in law and the prosecution has not established the case against the appellant beyond a reasonable doubt. [249B]

3(a). In a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the court on its guard to scrutinise the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof.

3(b). In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and those circumstances must be conclusive in nature. Moreover, the established facts should be consistent only with the hypothesis of the guilt of the accused alone and totally inconsistent with his innocence. [238E-F]

4. No motive has been established by the prosecution for the appellant to commit the murder of his wife and the evidence of Tara Chand father of the deceased as well as the sister of the deceased and the tenants living in the same house disclose that the relations between the husband and wife were cordial. [238E]

5. The circumstance (of the disclosure statement and the

consequent recovery pursuant thereto of the ornaments belonging to the deceased is of such an incriminating nature that if found established by reliable and trustworthy evidence, it would go a long way to furnish proof of the guilt of the appellant and connect him with the crime and if the evidence in

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support of that circumstance is found to be not reliable, the entire chain of circumstantial evidence will snap so badly as to affect the credibility of the prosecution case as a whole. [238G-H]

6. According to the prosecution after the appellant had been taken to the police station by the investigating officer he was interrogated after being placed under arrest. He voluntarily made a disclosure statement Ex.PC. The disclosure statement was recorded by the SHO and has been attested by Kuldeep Kaul PW1, SI Dalip Singh PW6 and Harnaik Singh PW2. Pursuant to the disclosure statement, the appellant is alleged to have led the police party to the recovery of the ornaments from a drain-hole in his bathroom. The recovery memo EX.PF was prepared at the spot and was attested by PW6. PW1 and PW2 besides the Investigating Officer. [239A-B]

7. According to the appellant, however, he had made no disclosure statement nor led the police party to the recovery of the ornaments as alleged, and according to the defence version, the missing ornaments had in fact been recovered by the police party around 11 A.M. during search from the service lane, from underneath a slab, near the boundary wall and at that time the appellant and Jagminder Dass Jain were also present. This defence version is supported by the evidence of DW2, Tara Chand, father of the deceased. [242D-E]

8. The Sessions Judge carefully considered the evidence led by the prosecution with regard to the disclosure statement and the recovery of ornaments. It was found that the evidence of Harnaik Singh PW2, who according to DW11 Sunder Lal constable of police station Defence Colony, had been earlier also cited as a witness for the prosecution in a case investigated by Harmit Singh the then Sub-Inspector of police and the present Investigation Officer was not reliable and that the Investigating Officer had not told the truth when he had deposed that he did not know Harnaik Singh earlier. The Sessions Judge also found the evidence of PW1 Kuldeep Kaul as not reliable or trustworthy and disbelieved his testimony by giving cogent reasons after properly appreciating the evidence led by the prosecution. The defence version with regard to the recovery found as more probable and it was opined that the investigating officer had created false clues and fabricated false evidence. [243H, 244A-B-D]

9. The High Court on the other hand did not deal with the various discrepancies and contradictions appearing in the prosecution evidence

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relating to the making of the disclosure statement and the recovery of the ornaments, but place reliance on the testimony of Kuldeep Kaul PW1 and Harnaik Singh PW2 to hold that the disclosure statement and the recovery had been made in the manner suggested by the prosecution. [244G]

10. There is contradiction between the evidence of Kuldeep Kaul PW1 and the I.O. as to the place where Kuldeep Kaul signed the recovery memo. According to the I.O. it was signed at the spot while according to Kuldeep Kaul PW1, he had returned to the police station and there signed the

recovery memo. After carefully analysing the evidence, it is found that Kuldip Kaul PW1 was a convenient witness and his evidence does not appear to be trustworthy. [245B-C]

11. As regards the recovery of ornaments also, there is a very serious infirmity which emerges from the testimony of Harnaik Singh PW2. Contrary to what the I.O. and the other witnesses stated, Harnaik Singh PW2 deposed that the ornaments were taken out by the Sardarji I.O. from the drain hole and not by the appellant. This probabilises the defence version that the ornaments had been recovered during the search and were with the I.O. when the ritual of the recovery under Section 27 of the Evidence Act was performed. The contradictions in the evidence of the I.O. and S.I. Dalip Singh PW6 as to who had weight the ornaments after their alleged recovery also casts doubt on the correctness of the prosecution story and the bonafides of the investigation. [245G-H]

12. Having regard to the serious discrepancies, contradictions and the attempt of the Investigating Officer to create false clues and fabricate false evidence, the Sessions Judge was perfectly justified in rejecting the prosecution evidence relating to the disclosure statement Ex. PC and the consequent recovery of the ornaments. [247C]

13. The prosecution has failed to establish that the appellant did make the disclosure statement as alleged by the prosecution or led to the recovery of the ornaments belonging to the deceased in the manner suggested by the prosecution. This piece of circumstantial evidence, therefore, has not at all been established, much less conclusively. [247D]

14. Though with the ruling out of the circumstance relating to the recovery of the ornaments as not having been established conclusively, the chain of the circumstantial evidence snaps badly, there are some other

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circumstances also in the prosecution case which militate against its correctness. Admittedly, the nail clippings of the nails of the deceased had been taken by the police. There was also recovery of the hair from near the cot where the dead body was lying and the removal of the hair from the scalp of the appellant by the I.O. for the purpose of their comparison. The report of the chemical examiner has not connected the hair recovered from the cot with those of the appellant. There is no material on the record either to show that the nail clipping had any blood, which could have tallied with the blood group of the appellant. Thus, both the nail clippings and the hair have failed to connect the appellant with the crime. [247F-H]

15. The possibility that the entire case was built up on suspicion after the dogs of the dog squad pointed towards the appellant cannot be ruled out. Since, the appellant had slept in the verandah near the cot where the dead body of his wife was found; had locked the collapsable door with the recovered lock before going to sleep and had himself been close to the dead body before the police came, the picking up of the smell by the dogs and pointing towards the accused could not be said to be a circumstance which could exclude the possibility of guilt of any person other than that of the appellant or be compatible only with hypothesis of guilt of the appellant. The pointing out by the dogs could as well lead to a misguided suspicion that the appellant had committed the crime. [248E-F]

16. The explanation of the appellant regarding the injuries on his person as having been caused by the police is also quite plausible because according to the father of the

deceased, the sister of the deceased, the tenants of the house and other neighbours who had reached the spot, the appellant was wearing only a vest and the pyjama and no shirt and there were no marks of injuries on his body before he was taken to the police station. The prosecution case regarding the presence of injuries on the person of the deceased also therefore, is quite doubtful. [248G-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 123 of 1985.

From the Judgment and Order dated 12.11.84 of the Delhi High Court in State Criminal Appeal No. 71 of 1978.

R.K. Garg and Rajendra Prasad Singh for the Appellant.

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N.N. Goswamy and Ashok Bhan for the Respondent.

The Judgment of the Court was delivered by

DR. ANAND, J. This appeal by special leave, is directed against the judgment of the High Court of Delhi dated 12th of November 1984, setting aside an order of the Additional Sessions Judge New Delhi, acquitting the appellant of an offence under Section 302/203 IPC.

The prosecution case is that on the fateful night of 25th/26th July, 1976, the appellant and his wife, Usha Jain, went to sleep in the back verandah of their house situated at P-5, Green Park Extension, New Delhi while his brother M.P. Jain alongwith his wife Sharda and children went to sleep separately in their bed-room in the same house. Police Control Room was informed over the telephone by Sulekh Chand Jain at 4.55 A.M. that an incident had taken place at P-5, Green Park Extension and on receiving the telephone message, S.I. Mauji Ram made a record of it in the daily diary and passed on the information to the duty officer at police station Hauz Khas. ASI Maha Singh was deputed to proceed to the spot for investigation of the case. After reaching the spot, the said ASI Maha Singh informed the police station on telephone that a murder had taken place. The information so provided was recorded by ASI Mangal Sen in the daily diary whereupon SHO Harmit Singh immediately left for the spot alongwith SI Dalip Singh, SI Moti Singh, Constable Bhawani Dutt and Constable Randhir Singh. The police party arrived at the spot at about 5.35 a.m. and took charge of the investigation. The appellant was present near the dead-body which had been covered by a Dhoti and on interrogation, the appellant informed the police party that his brother and family had retired for the night in their bed room at about 10.00 p.m. and he alongwith his wife had slept in the back verandah. Before going to sleep, he had locked the collapsable door of the back verandah. The wife of the appellant was wearing a gold chain on her neck, eartops in her ears and golden bangles on her wrists besides glass bangles. At about 1.30 a.m., the appellant felt thirsty and asked his wife to give him water and after some time when he felt chilly, he went inside the room. He slept in the room while his wife kept sleeping outside. At about 3.45 a.m., the appellant got up to urinate and when he went outside the room, he found that his wife was lying on the cot with her face upwards but her clothes were in a loose condition and he was almost naked upto the thighs. On going closer to

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the cot, he found her tongue protruding and on touching her, he found her dead. He noticed some scratches on her face

and neck and also discovered that the golden chain which was on her neck and golden bangles were missing from her body. According to the appellant, his wife had been murdered by somebody by strangulation while committing the theft of the golden chain and the bangles. He started screaming and his brother, the brother's wife as well as some neighbours came there. Since, his telephone was found to be out of order, police was informed at his request by Sulekh Chand, another neighbour, from his telephone. The parents of the deceased, living in Sonapat were also conveyed the tragic news on telephone through their neighbours. The statement of the appellant which revealed a case of lurking house trespass, with a view to commit offence of theft and murder, was recorded as Ex. P5 and a case under Section 460 IPC was registered. The statement of the appellant Ex. P5, was despatched by SHO Harmit Singh to the police station with his endorsement for registration of a case under Section 460 IPC. Formal FIR was registered by ASI Mangal Sen at the police station and the same was received back by the SHO at the house of the appellant at about 6.45 a.m. The crime team as also the dog squad were summoned. Both the dogs of the dog squad were first let loose to pick up the smell and according to the ASI Ranbir Singh, in-charge of the dog squad, the dogs after picking up the smell from the lock lying in the corner of the back courtyard and from the spot, went to the room where the appellant was sitting and each of the dogs pointed towards him by turn. That raised a suspicion against the appellant. According to the SHO, he then asked the appellant to remove his shirt and found that the appellant had injuries in the nature of bruises etc. on the front part of his body, on the chest, as well as on his back. Since the appellant had told the police that the bangles of his wife were identical to the bangles of Sharda, the wife of his brother M.P. Jain, who also is the sister of the deceased, the SHO took into possession four bangles from Sharda also for comparing the same in case the stolen property was recovered. The appellant was thereafter taken for further interrogation to the police station. Before proceeding to the police station, the SHO had effected recoveries of various articles including some hair, lying near the dead body on the cot. The appellant had produced the key at the asking of the SHO, which purported to be the key of the lock which had been found lying in the back court-yard and the same was taken into possession. The lock was also taken into possession but it did not appear to have been

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broken or tampered with. The recovery of the key was witnessed amongst others by Kuldip Kaul PW1 who was present in the crowd outside the home of the appellant. The inquest proceedings were conducted by SI Moti Singh and the body was thereafter sent for postmortem examination.

At the police station, during interrogation the appellants was placed under arrest and in the presence of SI Dalip Singh PW6, Kuldip Kaul PW1 and Harnaik Singh PW2, he made a disclosure statement, Ex. PC, to the effect that he had concealed the golden chain and the bangles in his bathroom and in pursuance of the disclosure statement, the appellant led the police party to the bathroom of his house and after removing the cover from the drain hole, took out the golden chain and the bangles and handed the same over to SHO Harmit Singh in presence of the witnesses. Recovery memo, EX.PF was prepared and the golden chain and the bangles after being duly weighed were sealed separately and the seal was handed over to Kuldip Kaul PW1. The appellant was sent for

medical examination, after memo of his personal search EX.PE was prepared. Dr. Dharam Pal PW15 found as many 18 injuries on the person of the appellant consisting of bruises and abrasions on the nose, chest, arm shoulder and on the umbilical region. The injuries were stated to have been caused by blunt weapon.

The postmortem on the dead body of Usha Jain was conducted on 27.7.1976 at 9.00 a.m. by Dr. Bharat Singh PW-4 and according to the postmortem report EX.PL, all the injuries found on the person of the deceased were ante-mortem and the same were possible by throttling the deceased and that the death of Usha Jain was caused by asphyxia resulting from throttling. The deceased was carrying 7th month pregnancy at the time of her death.

After the disclosure statement was made by the appellant leading to the recovery of the ornaments and after noticing injuries on his person, the case which was originally registered under Section 460 IPC was converted, into one under Section 302/203 IPC. The SHO during the course of investigation also took sample hair of the appellant and sent the same alongwith the hair recovered from the cot of the deceased to the Central Forensic Science Laboratory. The nail clippings of the deceased were also sent for analysis to CFSL. Site plan, EX.PO, was also prepared during the investigation. After completion of the investigation, challan was filed against the appellant and he was sent up for trial for offences under Section 302/203 IPC in the court of Additional Sessions Judge, New Delhi.

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There being no eye-witness of the occurrence, the prosecution sought to establish the case against the appellant on the basis of circumstantial evidence. The circumstances set up by the prosecution against the appellant during the trial were

(i) information to the police at 4.55 AM given by a neighbour and not the appellant;

(ii) that information not specifically giving out that a murder had taken place and simply intimating happening of an incident;

(iii) The accused having slept alone at night in the verandah with the deceased after having locked the collapsable door of that verandah from inside and that lock having been found in the corner of the back courtyard in the morning without being tampered with;

(iv) The deceased and accused were last seen together,

(v) The dogs of the Dog Squad having pointed out the accused after picking up scent from that lock;

(vi) The ornaments which were stated to be on the person of the deceased while she was sleeping, and which were found missing when she was discovered dead having been recovered from the drain hole of the bath room attached to the bed room of the accused in consequence of and in pursuance of a disclosure statement made by the accused;

(vii) injuries found on the person of the accused in the nature of abrasions, contusions and lastly;

(viii) the accused having given false information to the police by means of his

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statement Ext. P5"

The learned Sessions Judge carefully analysed each of the circumstance and finally observed

"On a resume of the analysis of prosecution evidence, and
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on a very careful appraisal of all the facts and circumstances set up by the prosecution, I am of my earnestly considered view that the prosecution in this case has entirely failed to prove any of the circumstances set up against the accused, much less to establish the chain of circumstances, so as to bring out a nexus between the crime and the accused."

The appellant was, therefore, acquitted of the offences under Section 302/203 IPC.

On an appeal by the State, a division bench of the High Court reversed the order of acquittal of the appellant. The High Court held that the circumstances formed a chain and sequences so complete by themselves that one was left in no manner of doubt that the appellant and the appellant alone had committed the crime. The appeal was accepted and the order of acquittal was set aside. The appellant was sentenced to undergo rigorous imprisonment for life under Section 302 IPC and also to undergo rigorous imprisonment for a period of one year under Section 203 IPC. Both the sentences were directed to run concurrently.

Appearing for the appellant, Mr. R.K. Garg, the learned senior counsel submitted that the approach of the High Court was totally erroneous and that a well considered and well reasoned judgment of the Trial Court was upset by the High Court by drawing inferences which were not available from the record and by ignoring material discrepancies and infirmities in the prosecution evidence which not only did not establish various circumstances but which also showed that the chain of circumstantial evidence was wholly incomplete. Learned counsel for the appellant submitted that the appellant had been roped in on the basis of misguided suspicion and that the circumstances relied upon by the prosecution were not of any conclusive nature and they did not exclude the hypothesis, other than that of the guilt of the appellant. It was emphasised that the investigating officer had created false clues and suppressed material which went against the prosecuting version and supported the defence version. He argued that the High Court should have drawn adverse inference against the prosecution for not producing the first informant and withholding the evidence of the father of the deceased.

Mr. N.N. Goswami, learned senior counsel assisted by Mr. Ashok

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Bhan, advocate, on the other hand submitted that some of the circumstances like the pointing out of the appellant by the dogs of the Dog Squad, after picking up the scent from the place of occurrence; the disclosure statement and the recovery of ornaments as a consequence thereof at the instance of appellant and the presence of injuries on the person of appellant, were of such a conclusive and clinching nature that they left no doubt that the appellant had committed the crime. It was submitted that the appellant had made attempt to mislead the investigating officer by giving a false version with a view to screen himself. According to the learned counsel the established circumstance could only lead to the hypothesis consistent with the guilt of the appellant and not with his innocence. We shall now consider various circumstances with a view to

determine whether the circumstances alleged against the appellant have been established and the chain of evidence is so complete as to lead to no other hypothesis except the one consistent with the guilt of the accused.

There is no motive established in this case by the prosecution for the appellant to commit murder of his wife and the evidence of Tara Chand father of the deceased as well as the sister of the deceased and the tenants living in, the same house disclosed that the relations between the husband and wife were cordial. In a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the court on its guard to scrutinise the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof.

Since, the disclosure statement and the consequent recovery pursuant thereto of the ornaments belonging to the deceased has been considered to be one of the most important piece of circumstantial evidence in the case not only by the High Court but has also before us by the learned counsel appearing for the State, we shall first consider that circumstance. This circumstance is indeed of such an incriminating nature that if found to have been established by reliable and trustworthy evidence, it would go a long way to furnish proof of the guilt of the appellant and connect him with the crime and on the other hand, if the evidence in support of that circumstance is found to be not reliable, the entire chain of circumstantial evidence will snap so badly as to affect the credibility of the prosecution case as a whole.

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According to the prosecution after the appellant had been taken to the police station by the investigating officer he was interrogated after being placed under arrest. He voluntarily made a disclosure statement EX.PC. The disclosure statement was recorded by the SHO and has been attested by Kuldeep Kaul PW-1, SI Dalip Singh PW-6 and Harnaik Singh PW-2. Pursuant to the disclosure statement, the appellant is alleged to have led the police party to the recovery of the ornaments from a drain-hole in his bathroom. The recovery memo EX.PF was prepared at the spot and was attested by SI Dalip Singh PW-6, Kuldeep Kaul PW-1 and Harnaik Singh PW-2 besides the Investigating Officer. We shall, therefore, first analyse the evidence of the witnesses of the disclosure statement and the recovery memo. Inspector Harmit Singh, PW-19, SHO, while deposing about the disclosure statement and the consequent recovery of the ornaments at the pointing out by the appellant, stated that he interrogated the appellant in presence of Dalip Singh, Kuldeep Kaul and Harnaik Singh PWs at the police station at about 1.45 p.m. and in their presence the appellant made the disclosure statement Ex. PC and then led the party to his house and pointing out the drain hole in the bath room, the appellant took out from that drain hole, three golden bangles and one golden chain, which were weighed separately and while golden bangles were put in one packet the golden chain was put in another packet and the seal used to seal both the packets was handed over to Kuldeep Kaul PW-1. The recovery memo EX.PF was prepared at the spot which was signed by the witnesses then and there at about 2 or 2.30 p.m. In his cross-examination, the Investigating Officer denied the suggestion that the bangles and the chain were recovered from underneath a slab in the service lane in the

presence of the appellant and Jagminder Dass Jain and a memo had been prepared which was signed by them. He also stated that he did not call any goldsmith to weigh the ornaments because he had taken with him the measure and the scale. He then asserted that "Kuldip Kaul did not come back with me to the police station when I came back in the evening after recoveries of the ornaments etc. had been effected at the spot. I recorded statement of Kuldip Kaul at the spot after recoveries. That was a complete statement of his and I recorded only one statement of his on that day. Kuldip Kaul left from the spot and we were still there when he left." Regarding Harnaik Singh PW2, the I.O. stated "I had gone out to

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look for another witness and I found at that time Harnaik Singh reversing his taxi in the compound of the police station and then I summoned him. He had told me that he had dropped a passenger and was taking out his taxi. I did not see passenger going inside. There are 60/70 quarters at the back of the police station and that passengers might have gone to any of those quarters. The disclosure statement was made by the accused in his presence. I had read out the papers to Harnaik Singh before getting his signature. In fact, it was written in his presence and whatever were dictated by the accused was within his hearing. It is incorrect to suggest that disclosure statement was already written and I got signatures of Harnaik Singh without explaining to him the document and assuring him to sign on my trust." The witness also asserted that he had seen Harnaik Singh for the first time only at about 2 or 2.30 p.m. outside the police station while reversing the taxi and did not know him from before. Let us now examine as to what the other witnesses have to say in this regard.

Kuldip Kaul PW1, while admitting that he was present outside the house of the appellant in the morning at about 6.30 a.m. when the police party had reached there and had offered himself to join the investigation, went on to say that after the SHO had lifted the shirt of the appellant and found 15-20 marks of scratches on the chest of the appellant, they all came to the police station along with the appellant. He added that while they were sitting at the police station, Harnaik Singh PW2 also came there along with SHO Harmit Singh and after some initial hesitation, the appellant disclosed that he had kept one golden chain and three bangles which his wife was wearing, in the drain-hole of the bath room of his house and he could show the same to the police and get them recovered. He deposed that disclosure statement EX.PC was prepared at the police station and was signed by him as well as by the other witnesses present there. Thereafter, the appellant was arrested and he led the police party to his house where he pointed out the drain-hole in the bath room and after removing the cover of the drain hole, the appellant took out from inside the drain hole, a golden chain and three golden bangles and handed over the same to SHO Harmit Singh. Memo of recovery EX.PF was prepared and was signed by the witnesses. With a view to assert his independence and that he had no earlier connection with the I.O., he stated "I came to know SHO Harmit Singh since March, 1976, when I organised a function of Youth Congress and had contacted the SHO for arrangements for the said function. I have, never gone to the police station in any other connection or regarding public

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grievances. I have not organised any other function in the area except the one stated above. Regarding the signing of

the recovery memo at the house of the appellant and his leaving for his house from there as was deposed to by the Investigating Officer, Kuldip Kaul PW1 stated "I had come back with the police to P.S. after the recovery of the ornaments and there at about 3.30 p.m. my, statement was recorded by the police and I came back home at about 4 p.m."

Harnaik Singh PW2 giving his version regarding the disclosure statement and the consequent recovery stated "About 4-1/2 or 5 months back at about 2/2.30 p.m. I had taken a passenger in my taxi to the quarters of P.S. Hauz Khas. When I was coming back after dropping the passenger one police officer, Sardarji, who was standing at the gate of the P.S. called me, and took me inside the P.S. There is one room, besides the police were one Mr. Kaul PW1 and Surinder Pal Jain, accused present in court. Then in the room that Sardarji police officer took up one paper which had been prepared already and asked me to sign, saying that they have to conduct some inquiry in the case. Then that Sardarji told me to accompany the police party to Green Park. Then we went there besides the police party and myself PW1 and the accused were also there. On reaching the house in Green Park the accused led the police party to the bath room and I also followed them in to the both room. Then the Sardarji took out there bangles and one gold chain from the gutter of the bath room. The Sardarji took those three bangles from the gutter on being told by the accused." He asserted that he did not at all know the Sardarji police officer prior to that date and that. he had gone to the police station for the first time on that day. During the cross-examination he admitted that "The contents of memos EX.PC and EX.PF were not read out to me but I was told by the police that the weight of things recovered and the recovery was being written in those papers."

ASI Maha Singh, PW5, who had arrived at the spot at the earliest and had sent information to his senior officers including SHO Harmit Singh and had kept a guard at the spot. During the cross-examination admitted that "Kuldip Kaul and Harnaik Singh witnesses had come there before 7 a.m."

ST Dalip Singh PW6, who had also accompanied the SHO to the house of the appellant at about 6.30 a.m. stated "when we reached Kuldip Kaul and Harnaik Singh witnesses were present. ASI Maha Singh was already

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there." The witness also deposed about the interrogation of the appellant and the recording of the disclosure statement at the police station in his presence and the subsequent recovery of the ornaments and the preparation of the recovery memo PF in the presence of Kuldip Kaul and Harnaik Singh PWs. Contrary to what Harnaik Singh PW said, this witness deposed "the accused himself took out three bangles and one golden chain from the main-hole and handed them over to the SHO." The witness during the cross-examination stated "The ornaments were weighed by some goldsmith who was called there by the SHO. I do not know whether that goldsmith also signed the possession memo or not."

The above is the entire prosecution evidence relating to the making of the alleged disclosure statement by the appellant and the consequent recovery under Section 27 of the Evidence Act at his instance.

According to the appellant, however, he had made no disclosure statement nor led the police party to the recovery of the ornaments as alleged. According to the defence version, the missing ornaments had in fact been recovered by the police party around 11 a.m. during search

from the service lane, from underneath a slab, near the boundary wall and at that time the appellant and Jagminder Dass Jain were also present. This defence version is supported by the evidence of DW2, Tara Chand, father of the deceased. The presence of this witness is admitted at the spot by the Investigating team, as was natural being the father of the deceased. His testimony assumes significance as in the normal course of events, he would be the last person to screen the real offender who murdered his daughter. Tara Chand DW2 stated that the police had interrogated him and he had told the I.O. that the appellant and the deceased had good relations with each other and that he had never received any complaint of any dispute or difference between them from his daughter. That he had also married of his other daughter with the brother of the appellant, M.P. Jain and that both the sisters alongwith their husbands were living together in the same house. Deposing about the sequence of events at the house of the appellant, the witness stated "Then at about 10.30 a.m. the police took into possession four golden bangles from Sharda but I cannot say as to from where she had produced them, whether she was wearing them or she had brought them from the house. I had seen her just producing them. She had handed over those bangles to the same Sardarji police officer who had talked to me and at that time we were in the drawing room. The police

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had been told that the bangles which Usha was wearing and which were missing were of the same type which were with Sharda and there upon they conducted search for the articles in and around the house, with the bangles in hand They went out towards the back side. Persons who were inside the house and also S.P. Jain accused (had joined the search party). I came to know that three missing bangles and one chain had been found out from underneath a slab at the back of the house. I came to know at about 11.30 a.m. that these things had been recovered and after about 1/2 hour of that the police took in jeep M.P. Jain, S.P. Jain and Sharda Jain to the police station. Police told me that they were taking all the three for interrogation." During the cross-examination he asserted, 'After the police had taken Sharda's four bangles in hand and they went around looking for the stolen bangles I was in the varandah by the side of the dead body and kept on observing the scene and I saw that after sometime the same sub-inspector who had the four bangles in hand was coming from outside from the back side and had three bangles and one chain in the other hand. Some 5/7 persons from the public who were already inside the house had gone outside with the police and they also came back with the police after recovery of the ornaments. I learnt from them that those ornaments had been found front underneath a slab and sometime after myself went out and saw that spot. The three bangles and chain were loose and were not found in any cloth." He categorically denied the suggestion that the appellant had led the police party to the bath room on that day and had got recovered form the drain hole of the bath room, the three bangles and the golden chain.

Shri Jagminder Dass Jain appeared as DW12. He lives in the same locality as the appellant and had gone to the house of the appellant soon after 6 a.m. on learning that some murder had taken place. Deposing about the recovery of ornaments, he stated that the SHO after taking into possession the bangles from Sharda went outside towards the back lane and the witness accompanied the SHO and the crime

team along with some others. He stated that during the course of the search of the back lane and from underneath a slab, one gold chain and three golden bangles were recovered. The recovered bangles were compared with the other which had been earlier produced by Sharda and a memo of the recovery was prepared by the police and was signed by the witness as well as the appellant.

The learned Sessions Judge carefully considered the evidence led by the prosecution with regard to the disclosure statement and the recovery

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of ornaments. She found the evidence of Harnaik Singh PW2, who according to DW11 Sunder Lal constable of police station Defence Colony, had been earlier also cited as a witness for the prosecution in a case investigated by Harmit Singh the then Sub-inspector of police and the present Investigating Officer was not reliable and that the Investigating Officer had not told the truth when he had deposed that he did not know Harnaik Singh earlier. That Harnaik Singh had on his own showing signed the disclosure statement after it had already been written and that the appellant had not made any disclosure statement in the presence of Harnaik Singh PW2, who had been introduced being a convenient witness.

The learned Sessions Judge also found the evidence of PW1 Kuldip Kaul as not reliable or trustworthy and disbelieved his testimony by giving cogent reasons after properly appreciating the evidence led by the prosecution. She found the defence version with regard to the recovery as more probable and opined that the investigating officer had created false clues and fabricated false evidence. The learned Sessions Judge observed

"I, therefore, cannot bring myself at all to accept the prosecution case about any disclosure having been made by the accused or having led to recovery of missing ornaments in pursuance to this disclosure, and I am constrained to say that the I.O. has made unabashed attempt to fabricate false evidence to bring on record incriminating evidence against the accused whom he had tied down for the offence u/s 302 IPC and went to the extent of introducing false witnesses, preparing fabricated recoveries, replacing them by original recoveries."

The High Court on the other hand did not deal with the various discrepancies and contradictions appearing in the prosecution evidence relating to the making of the disclosure statement and the recovery of the ornaments. The High Court placed reliance on the testimony of Kuldip Kaul PW1 and Harnaik Singh PW2 to hold that the disclosure statement and the recovery had been made in the manner suggested by the prosecution. In our opinion, the High Court did not properly appreciate the prosecution evidence while reversing the well considered judgment of the learned Sessions Judge.

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On our independent appraisal of the evidence we find that the prosecution evidence relating to the disclosure statement and the recovery of ornaments is not only discrepant and contradictory but also suffers from glaring infirmities and improbabilities rendering it unsafe to rely upon the same.

There is contradiction between the evidence of Kuldip Kaul PW1' and the I.O. as to the place where Kuldip Kaul signed

the recovery memo. According to the I.O. it was signed at the spot while according to Kuldip Kaul PW1, he had returned to the police station and there signed the recovery memo. Again, while Kuldip Kaul attempted to show that he had met the I.O. just once and did not know him earlier, the I.O. has given a direct lie to it. After carefully analysing the evidence, we find Kuldip Kaul PW1 was a convenient witness and his evidence does not appear to be trustworthy. Same is our opinion about Harnaik Singh PW2. Whereas both Harnaik Singh PW2 and the I.O. want the Court to believe that they did not know each other earlier and that I.O. had seen Harnaik Singh for the first time on that day only at the police station, there is abundant material on the record to show only that Harnaik Singh had earlier been cited as witness by the same I.O. while posted as Sub-Inspector at another police station, Harnaik Singh PW2 was also present outside the house of the appellant alongwith Kuldip Kaul PW1 as early as on 6.30 AM on that day. Harnaik Singh PW2 also exposed his unreliability when he admitted during the cross-examination that the disclosure statement had not been made by the appellant in his presence at the police station but that he had signed a statement which had already been prepared, thus, giving a lie not only to Kuldip Kaul PW1 but also to the I.O. who have deposed to the contrary.

As regards the recovery of ornaments also, there is a very serious infirmity which emerges from the testimony of Harnaik Singh PW2. Contrary to what the I.O. and the other witnesses stated, Harnaik Singh PW2 deposed that the ornaments were taken out by, the Sardarji I. O. from the drain hole and not by the appellant. This probabalises the defence version that the ornaments had been recovered during the search and were with the I.O. when the ritual of the recovery under Section 27 of the Evidence Act was performed. The contradictions in the evidence of the I.O. and S.I. Dalip Singh PW6 as to who had weighed the ornaments after their alleged recovery also casts doubt on the correctness of the prosecution story and the bonafides of the investigation.

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The learned Judges of the High Court noticed the evidence of Harnaik Singh as regards the manner of his signing the disclosure statement and the alleged recovery of ornaments and observed :

"Harnaik Singh PW2 even though cited as a witness of the disclosure statement, does not subscribe to it and obviously, as stated by Harmit Singh, he was only brought to the police station after the first interrogation was conducted. In any event we think that a person like Harnaik Singh PW2 who is not prepared to subscribe to a part of the prosecution case to which he was not a witness could not but be a truthful witness and there is absolutely no reason not to believe his version that these ornaments were recovered at the pointing out of the accused and were drawn from the drain hole by the accused himself."

We are unable to appreciate this approach of the High Court. The Court seems to have made a virtue out of a vice. While deposing about the recovery of the ornaments from the drain hole of the bath room Harnaik Singh PW2 belied the entire prosecution case when he stated that after the appellant had led the police party to the bath room "the Sardarji took out three bangles and one golden chain from the gutter of the bath room". The High Court did not advert to this aspect of

the evidence at all. Kuldip Kaul PW1 who was also disbelieved by the learned Sessions Judge and in our opinion rightly, had also exposed the extent of falsehood indulged into by the investigating officer with regard to the time and place where the witness attested the memo of recovery of the ornaments but the High Court did not deal with the said circumstance also in its proper perspective and on the other hand unjustifiably criticised the Sessions Judge for her adverse comments on the veracity of the prosecution case. Obviously, the investigating officer had associated Kuldip Kaul PW1 not only because he was known to the SHO but also because he was a convenient witness who was prepared to sign the recovery memo at the police station at 3.30 PM, after the police party had returned from the house of the 'appellant. The glaring discrepancies and contradictions noticed above have rendered the evidence of Kuldip Kaul PW1, Harnaik Singh PW2 and the Investigation Officer Harmit Singh PW19 untrustworthy and unreliable. On the other hand, we find that the defence version regarding the recovery of ornaments is more probable and is supported by independent witnesses including Tara Chand

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DW2 father of the deceased whom the I.O. did not produce as a prosecution witness. Despite searching cross-examination nothing was elicited to create any doubt on the veracity of Tara Chand DW2, the father of the deceased, who, as already stated, would be the last person to screen the real murderer of his daughter. The evidence of Tara Chand DW2 has impressed us and we find that the version given by him, in the facts and circumstances of the case, was more probable. In view of the serious discrepancies contradictions and the attempt of the Investigating Officer Harmit Singh to create false clues and fabricate evidence, we are of the opinion that the learned Sessions Judge was perfectly justified in rejecting the prosecution evidence relating to the disclosure statement Ex. PC and the consequent recovery of the ornaments. The prosecution has failed to establish that the appellant did make the disclosure statement as alleged by the prosecution or led to the recovery of the ornaments belonging to the deceased in the manner suggested by the prosecution. This piece of circumstantial evidence, therefore, has not at all been established, much less conclusively.

In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and those circumstances must be conclusive in nature. Moreover, the established facts should be consistent only with the hypothesis of the guilt of the accused alone and totally inconsistent with his innocence.

Though with the ruling out of the recovery of the ornaments as circumstances relating to the been established conclusively, the chain of the circumstantial evidence snaps badly, we find that there are some other circumstances also in the prosecution case which militate against its correctness. Admittedly, the nail clippings of the nails of the deceased had been taken by the police. There was also recovery of the hair from near the cot where the dead body was lying and the removal of the hair from the scalp of the appellant by the I.O. for the purpose of their comparison. The report of the chemical examiner has not connected the hair recovered from the cot with those of the appellant. There is no material on the record either to show that the nail clipping had any blood, which could have tallied with the blood group of the appellant. Thus, both the/ nail

clippings and the hair have failed to connect the appellant with the crime.

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The information about the incident was given by Sulekh Chand Jain DW13 an immediate neighbour, of the deceased who informed the police at 4.55 AM on the request of the appellant about the occurrence. Sulekh Chand Jain was not examined by the prosecution and was instead examined by the defence and has appeared as DW13. He deposed that he had conveyed the information, as given to him by the appellant and other inmates of that house, regarding the murder of the deceased to Moti Ram PW11 at police station Hauz Khas on telephone. The record of the information conveyed by him at the police station was, however, cryptic and no explanation has been furnished as to why the recorded report was so cryptic. In answer to a question in the cross-examination, the witness naturally expressed his ignorance as to why the report had been recorded in the manner in which it was recorded. That was natural. This explanation was required to be furnished by the police witnesses rather than DW13. Though he was subjected to incisive cross-examination, nothing emerged from the evidence of DW13 which may show that he had not conveyed the information of murder having been committed to the police. Under these circumstances, the argument of Mr. Garg that the report was designedly left vague to enable the investigating agency to fill in the blanks latter cannot be dismissed as wholly unpalausible particularly when we have noticed the conduct of the Investigating Officer during the investigation. The possibility that the entire case was built up after the dogs of the dog squad pointed towards the appellant cannot be ruled out. Since, the appellant had slept in the verandah near the cot where the dead body of his wife was found; had locked the collapsable door with the recovered lock before going to sleep and had himself been close to the dead body before the police came, the picking up of the smell by the dogs and pointing towards the accused could not be said to be a circumstance which could exclude the possibility of guilt of any person other than that of the appellant or be compatible only with hypothesis of guilt of the appellant. The pointing out by the dogs could as well lead to a misguided suspicion that the appellant had committed the crime. The explanation of the appellant regarding the injuries on his person as having been caused by the police is also quite palausible because according to the father of the deceased, the sister of the deceased, the tenants of the house and other neighbours who had reached the spot, the appellant was wearing only a vest and the pyjama and no shirt and there were no marks of injuries on his body before he was

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taken to the police. station. The prosecution case regarding the presence of injuries on the person of the deceased also, therefore, is quite doubtful.

On an independent appraisal of the evidence on the record, we have therefore unhesitatingly come to the conclusion that the learned Sessions Judge was perfectly justified in acquitting the appellant of all the charges and the reasoning given and the findings recorded by her are sound, cogent and reasonable. The High Court was not justified to set aside those findings on surmises and conjectures. The finding of guilt recorded against the appellant by the High Court is not sustainable in law and we, agree with the learned Sessions Judge that the prosecution has not established the case against the appellant beyond a

reasonable doubt. We, accordingly, set aside the judgment of the High Court convicting the appellant for the offence under Section 302/203 IPC. The appeal is allowed and the appellant acquitted of both the charges. The appellant is on bail, his bail bonds shall stand discharged.

N.V.K.

Appeal allowed.

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JUDIS