

A

TARSEEM KUMAR

v.

THE DELHI ADMINISTRATION

AUGUST 18, 1994

B

[G.N. RAY AND N.P. SINGH, JJ.]

Indian Evidence Act, 1872, Section 3.

C

Murder—Circumstantial Evidence—Circumstances relied on : Disclosure of accused to police—Recovery of dead body and incriminating articles from the house in possession of accused—Signs of dragging the body—Extra judicial confession of accused—Deceased last seen with the accused—Conviction based on circumstantial evidence—Validity of—Relevance of motive in circumstantial evidence explained.

D

Section 27—Disclosure made by accused—Recovery of articles—Where prosecution produces stock witnesses to prove important circumstance Court should be cautious about the investigation done by police.

E

The appellant was prosecuted under section 302 of the Indian Penal Code. The prosecution case, based solely on circumstantial evidence, was that : (i) on 10.9.74 the appellant took three rooms on rent from PW 19, the owner of the House for storing garments in connection with the readymade garment export business; (ii) Later, on the appellant's request, two more rooms were given to him on 13.10.74 after PW 1 vacated the same; (iii) During the period the appellant was in exclusive possession of the house, it was alleged that he committed the murder of the son of PW 36 in one of those two rooms on 16.10.1974; (iv) The accused engaged two labourers, PW 2 and PW 3, who were known to the owner of house, for digging a pit and since both these labourers were busy during the day, they did part of digging on the evening of 17.10.74 and again when they came for completing the digging on 18.10.74 they found foul smell coming due to decomposition of the body and they informed PW-19; (v) The appellant made a disclosure statement and took the police party to his house from where blood stained cloths of appellant's blood group were recovered at his stance; (vi) the dead body of the victim was recovered from that portion of the house which was in appellant's possession; (vii) A glass tumbler with

F

G

H

(viii) There were signs of dragging of the body starting from the room upto the wall of the compound; (ix) the appellant made an extra judicial confession befort PWs 8 and 30 that he had hit the victim with a 'Saria'; and (x) PW-9, a relative of the deceased, had last seen the deceased with the appellant on a Motor Cycle on 16.10.1974.

Relying on the circumstantial evidence the Trial Court convicted the accused and sentenced him to undergo imprisonment for life. The Trial Court rejected the 'evidence of last seen' given by PW-9 stating that he was a stock witness and that though he was related to the deceased yet he never informed this fact to the father of the deceased and other relations when they were searching for the deceased. As regards extra judicial confession, the Trial Court rejected the testimony of PW-30 on the ground that he did not support the prosecution story and accordingly was declared hostile; in view of the fact that PW-8 was also proved to be a stock witness it was highly improbable that appellant made extra judicial confession before him.

The High Court dismissed the appellant's appeal. It relied on the signs of dragging of the body starting from the room upto the wall of the compound. The appellant filed appeal in this Court.

Allowing the appeal, giving benefit of doubt to the appellant, this Court

HELD : 1. As the case is based solely on the circumstantial evidence, the Court has to be satisfied that (i) The circumstances from which conclusion of guilt is to be drawn has been fully established; (ii) All the facts so established are consistent only with the hypothesis of guilt of the appellant and they do not exclude any other hypothesis except the one sought to be proved; (iii) The circumstances on which reliance has been placed are conclusive in nature; (iv) The chain of the evidence in the case is such that there is no scope for any reasonable ground for a conclusion consistence with the innocence of the accused. [746-C-D]

2. In the present case, it is not possible to hold that the vital links of the prosecution case which are necessary to be proved before a finding can be recorded, that the chain of evidence is complete, have been proved beyond reasonable doubt. [752-G]

3. Why and how PWs 2 and 3 went to inform the owner of the house

A about the foul smell when the appellant was not there, has remained a
mystery. Their evidence cannot be accepted because they allege a highly
improbable conduct on the part of the appellant. If their evidence is
rejected, then the main circumstantial evidence that the appellant was in
exclusive possession of the room in question and he had got the pit dug
by PWs 2 and 3 in which the dead body of the victim was found shall be
B deemed to have not been proved. [750-D; 752-H]

4. If the appellant had come in exclusive possession of the rooms, in
normal course, he would have brought furniture and other articles includ-
ing the readymade garments for which he had taken the rooms. Even
C according to prosecution, no furniture or any other article except the odd
articles found by the police had been kept by the appellant in the rooms.
No explanation has been furnished on behalf of the prosecution that if the
appellant was in such a pressing need, for the remaining two rooms, why
the readymade garments had not been stored in the three rooms which the
D appellant had taken. Once the prosecution case, that five rooms were in
exclusive possession of the appellant has been rejected, merely certain
articles, belonging to the appellant were found in one of the rooms, shall
not be an evidence of conclusive nature, on the basis of which it can be
concluded that the appellant had committed the murder.

[749-A; 748-G; 751-E-F]

E 5. In the normal course, it was not expected of the appellant that for
concealing a dead body, he would have engaged labourers PWs 2 and 3
who were connected with the owner of the house. It cannot be appreciated
as to why he would have got the digging work done only by PWs 2 and 3,
who had no time during the day and could work only during the evening
F hours. For the digging, other labourers could have been engaged, who
could have finished the work as early as possible. If the appellant was
getting a portion of the courtyard dug to bury the dead body of the victim
who had been murdered he would not have taken the risk, by delaying the
digging of the pit for three days, only because PW 2 and 3 could not do the
G digging work during the day time. [749-G, H; 750-B]

6. The Trial Court was justified in not placing reliance on the
evidence of PW 9 that he had last seen the deceased with appellant. Any
person related to the deceased in the normal course would have informed,
when search was being made for the victim, for three days, that he had
H seen him going with the appellant on a motor-cycle. [751-B]

7. The circumstance relied on by the High Court i.e. the signs of dragging of the body starting from the room upto the wall of the compound does not directly connect the appellant with the murder. Whosoever might have committed the murder in the room, must have dragged the dead body from the room to the courtyard in order to put it in the pit. [751-G] A

8. In view of Section 27 of the Evidence Act, there was no difficulty in accepting the evidence arising out of disclosure made by the accused and to consider the same along with other circumstances if proved beyond all reasonable doubt. But the unfortunate feature of the present case is that many stock witnesses of police have been produced on behalf of the prosecution to prove important circumstances. In this background the Court has to be very cautious about the investigation done by the police in this case. The circumstance regarding the recovery of the blood stained clothes belonging to the appellant, on the disclosure made by him, has to be examined in the background of the witnesses like PW 9, PWs 8 and 30, PWs 2 and 3, on whom it is difficult to place any reliance. [752-D-E-F] B C D

9. Where the case of the prosecution has been proved beyond all reasonable doubts on the basis of the materials produced before the Court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the Court for purpose of recording a finding that it was the accused who committed the crime in question even in the absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. In the present case, no motive on the part of the appellant to commit the murder has been suggested or established on behalf of the prosecution. [747-B-C-D] E F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 212 of 1981 etc. G

From the Judgment and Order dated 25.5.79 of the Delhi High Court in CrI. A. No. 88 of 1976.

With H

A Review Petition (Crl.) No. 241 of 1981.

R.K. Jain, R.K. Khanna, Ajay Bhalla, Ashish Verma, Ms. Abha R. Sharma, Manoj Goel and A.K. Pandey for the Appellant.

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

B

The Judgment of the Court was delivered by

C

N.P. SINGH, J. The appellant was held guilty for having committed the murder of Gulshan Rai, by the Trial Court. He was sentenced to undergo imprisonment for life under Section 302 of the Penal Code. The appeal filed on behalf of the appellant was dismissed by the High Court. This appeal has been entertained on leave being granted by this Court.

D

It is the case of the prosecution that the appellant on 10.9.1974 took three rooms which were situated in the rear of the house bearing No. 30 on rent from Shri Lal (PW19), the owner of the house, for storing garments in connection with the readymade garment export business. Later the appellant approached PW19 for other two rooms, which were then in occupation of tenant Kamla Parshad (PW1). These two rooms were on the front side of the house. It is said that possession of those two rooms were given to the appellant on 13.10.1974 after Kamla Parshad (PW1) vacated them.

E

It is further the case of the prosecution that the next day i.e. 14.10.1974, the appellant came to PW19 in the evening and sought his permission for digging the earth in the compound for plantation. For that purpose, the appellant is alleged to have engaged Gopal Singh (PW2) and Jai Gopal (PW3). They were shown the place in question on 16.10.1974 by

F

the appellant. They agreed to do the work in the evening only, as they were busy during the day time. They promised to come on 17.10.1974 in the evening. On 17.10.1974, PW2 and PW3 went to the house at about 5.00 P.M. when the appellant was present there. They started digging the earth in the compound of the house. The appellant was sitting on one of the steps of the staircase. The work of digging could not be completed that evening.

G

PW2 and PW3 again came on 18.10.1974 at 5.00 P.M. for completing the digging. The appellant was present at the gate. According to PW2 and PW3, some foul smell was coming. They reported the same to the appellant. The appellant asked them to come after 10/15 minutes. The appellant assured them that foul smell shall be cleaned. When they returned after

H

some time they found the house locked. The appellant was not there. They

informed about the foul smell emanating from the house to PW19. He came to the portion of the house from where foul smell was coming along with PW2 and PW3. A

At about 9.30 P.M., a person named Vinod informed the Police Control Room from public call office, that some incident had taken place near Dharma Singh's house. Sub-Inspector Jagtar Singh (PW31) left the police station along with constable Sohan Lal. Sub-Inspector (PW31) reached the aforesaid house No.30. PW19 stated that he was the owner of the house but it had been rented out to the appellant. The lock was broken. They further found that two rooms inside the house were locked. The lock of one of the rooms falling on the right side was broken. PW31 found a trail of blood from that room. Other articles like iron rod, pieces of cloth stained with blood and marks of dragging were found. In the courtyard some hair were lying. PW31 found the face of a human being, covered with earth. After some earth was removed a dead body with tied hands was kept there. PW31 recorded the statement of PW19 at 10.00 P.M. and sent the same to the Police State for registration of the First Information Report. PW31 recorded the statement of PW1, PW2 and PW3 aforesaid. Later the investigation of the case was entrusted to Sub-Inspector Om Parkash (PW37). PW37 reached the place of occurrence next morning i.e. 19.10.1974 at about 10.00 A.M. He prepared the inquest report and seizure list, of articles lying there. He found that the hands of the victim were tied with the chest and by that very rope the feet of the deceased were also tied with the neck. The dead body was under advanced stage of decomposition. The dead body was covered with a 'Tripal' and over the 'Tripal' mud had been kept. He sent the dead body for post mortem examination. B
C
D
E

It is further the case of the prosecution that during investigation appellant was arrested and PW37 interrogated the appellant. The appellant made a disclosure statement and took the police party to his house and from behind the trunks, he produced one 'Banyan' and one shirt stained with blood, which were taken into possession. It is the case of the prosecution that those clothes belonged to the appellant and were stained with human blood. F
G

The dead body was identified by PW36 the father of the deceased as that of Gulshan Rai. PW36 informed the Investigating Officer that the deceased had left for his college on 16.10.1974 at about 8.30 A.M. When H

- A the deceased did not return from his college by the time when he normally used to return, he made a search for his son from his friends and came to know that the deceased had not gone to the college that day. A report was lodged at 3.10 A.M. at police station Defence Colony i.e. on 17.10.1974. During post mortem examination six injuries were found on the person of the victim, all being lacerated wounds on the skull, parietal and occipital region of the head. According to the Doctor, those injuries had been caused by some blunt object.
- B

- The case of the prosecution solely rests on circumstantial evidences. As the case is based solely on the circumstantial evidence, the Court has to be satisfied that (i) The circumstances from which conclusion of guilt is to be drawn has been fully established. (ii) All the facts so established are consistent only with the hypothesis of guilt of the appellant and they do not exclude any other hypothesis except the one sought to be proved. (iii) The circumstances on which reliance has been placed are conclusive in nature. (iv) The chain of the evidence in the present case is such that there is no scope for any reasonable ground for a conclusion consistent with the innocence of the accused.
- C
- D

- Where the prosecution purports to prove the charge against the accused on basis of direct evidence - oral or documentary, then the evidence so produced can be considered by the Court on the well recognised principles, including as to when the First Information Report of the occurrence was lodged; whether the accused was named therein and the version of the occurrence which is being disclosed in the Court, was disclosed in the First Information Report or not. The witnesses who have supported the case of the prosecution are trustworthy or not. But in a case which is based on circumstantial evidence neither the accused is known nor the manner of the occurrence is known to the persons connected with the victim. Even the First Information Report, in respect of such cases are lodged after a considerable delay in many cases, because an offence has been committed, itself is not known to anyone. In the present case itself, the murder was perhaps committed on 16th and the factum of murder was known in the night of 18th, when foul smell started coming out of the house in question. In this background, the circumstances discovered by the investigating officer during the course of investigation and proved by the prosecution during the trial have to be cautiously examined for purpose of recording a verdict of guilt or giving benefit of doubt to the accused.
- E
- F
- G
- H

Normally, there is a motive behind every criminal act and that is why A
 investigating agency as well as the Court while examining the complicity of
 an accused try to ascertain as to what was the motive on the part of the
 accused to commit the crime in question. It has been repeatedly pointed
 out by this Court that where the case of the prosecution has been proved B
 beyond all reasonable doubts on basis of the materials produced before the
 Court, the motive loses its importance. But in a case which is based on
 circumstantial evidence, motive for committing the crime on the part of the
 accused assumes greater importance. Of course, if each of the circumstan- C
 ces proved on behalf of the prosecution is accepted by the Court for
 purpose of recording a finding that it was the accused who committed the
 crime in question, even in absence of proof of a motive for commission of
 such a crime, the accused can be convicted. But the investigating agency
 as well as the court should ascertain as far as possible as to what was the
 immediate impelling motive on the part of the accused which led him to
 commit the crime in question. In the present case, no motive on the part
 of the appellant to commit the murder of Gulshan, has been suggested or D
 established on behalf of the prosecution.

However reliance has been placed on behalf of the presecution on
 the following circumstances :-

- (1) Recovery of the dead body of the victim on 18.10.1974 at about E
 10.00 P.M. from the house No. 30 belonging to PW19 but from
 portion in possession of the appellant.
- (2) The deceased was seen with the petitioner riding on a motor- F
 cycle on 16.10.1974 at bus stop of village adchini by Jit Kumar
 (PW9).
- (3) Recovery of several articles belonging to the appellant from
 the house which is the place of occurrence.
- (4) Recovery of a glass tumbler with finger prints of the appellant G
 from the place of occurrence.
- (5) Signs of dragging of the body starting from door of the room
 the wall of the compound.
- (6) Extra judicial confession made by the appellant before Uttam H
 Singh (PW30) saying that the appellant had hit the victim with a

A 'Saria' at Adchini.

(7) On the basis of disclosure made by the appellant, the blood stained clothes containing the human blood of group 'O' belonging to the appellant were recovered from his house.

B Before other links of the circumstantial evidence are examined to ascertain as to whether they have been proved beyond reasonable doubt, it will be proper first to examine, as to whether the appellant had come in exclusive possession of the portion of the house in question, from where the dead body of the victim was recovered. The house belonged to Shri Lal C (PW19). PW19 had purchased that house on 29.4.1974. Two rooms of that house had been given on rent to Kamla Prasad (PW1). The appellant is alleged to have approached PW19 through his son Mange Ram (PW29) who was a class-fellow of the appellant, for giving three rooms on rent, for storing garments for export. PW29 asked his father PW19 to give the three D rooms to the appellant on rent. The appellant gave Rs. 50 to PW19 on 10.9.1974 as advance. According to PW19, he gave possession of the three rooms to the appellant the same day. In September 1974 the appellant visited the said house from time to time, but did not store anything therein. Later he told PW19 that he had lot of things to store and as such the space was not sufficient. It is the case of the prosecution that thereafter PW19 E asked PW1 to vacate the two rooms in his possession so that those two rooms could also be given to the appellant. PW1 assured PW19 that he would vacate the rooms within 5-10 days. He vacated the two rooms on 13.10.1974. On that very day PW19 gave possession of those two rooms to the appellant, who locked the same.

F According to the prosecution, the appellant had continued in possession of three rooms from 10.9.1974 and five rooms since 13.10.1974 till 18.10.1974 when the dead body of Gulshan was recovered from the courtyard of the house aforesaid. PW19 as well as his son PW29 asserted that during this period the appellant was in exclusive possession of the house. G It is, however, surprising that during this period even according to prosecution, no furniture or any other article except the odd articles found by the police in the morning of 19.10.1974 has been kept by the appellant. On behalf of the appellant, it was pointed out that in normal course of events, it was not expected that PW1 who was in possession of the two rooms H should have vacated those rooms in middle of the month and on the same

day the possession of those rooms could have been handed over to the appellant. If the appellant was in such pressing necessity for those two rooms, in normal course it was expected that he would have stored the ready made garments in the other three rooms, which he had taken possession on 10.9.1974. But according to PW19 and others, neither he had stored anything nor he used to remain in those rooms. The witnesses have stated that sometimes he used to come and stay in the house for few hours. None of the witnesses have stated that he was carrying any business from the said house. It has been rightly pointed out that normally any tenancy starts from beginning of a month. Even in the present case the arrangement was that the appellant will take the aforesaid two rooms w.e.f. 1st of November, 1974. But PW19 has stated that he gave possession of the two rooms to appellant on 13.10.1974 itself. In normal course all these aspects are not of much consequence, but they assume importance, in view of the fact that PW19 is the owner of the house and dead body was recovered from that house.

Apart from PW19, the other 4 witnesses who have proved the involvement of the appellant are all connected with PW19. PW29 is the son of PW19. PW1 claims to be the tenant of those two rooms and said to have vacated those two room on 13.10.1974 when possession was taken by the appellant. The murder is alleged to have committed in one of those two rooms sometime on 16.10.1974. The two labourers PWs2 and 3 who are alleged to have been engaged by the appellant for digging the flower pit, in the courtyard, are also connected with PW19. According to the prosecution case, on 18th evening they had gone to dig the pit as asked by the appellant. When appellant was not there and they found foul smell coming, they went to PW19 and reported about the foul smell coming from the house. It is not in dispute that PWs 2 and 3, the labourers were known to the owner of the house, PW19. In normal course, it was not expected of the appellant that for concealing a dead body, he would have engaged labourers PWs 2 and 3 who were connected with PW19, the owner of the house.

We fail to appreciate as to why appellant would have got the digging work done only by PWs 2 and 3, who had no time during the day and could work only during the evening hours. For the digging, other labourers could have been engaged, who could have finished the work as early as possible. PWs 2 and 3, first visited the house on 16.10.1974 but no digging was done

- A by them that evening. They are alleged to have done part of the digging in the evening of 17.10.1974. They came again on 18.10.1974 in the evening. By that time because of the decomposition of the dead body, foul smell was coming from the house. If the appellant was getting a portion of the courtyard dug to bury the dead body of the victim who had been murdered
- B on 16.10.1974, the appellant would not have taken the risk, by delaying the digging of the pit for three days, only because PWs 2 and 3 could not do the digging work during the day time. Anyone in the position of the appellant, would have engaged labours who could have dug the pit in the evening of 16.10.1974 itself, so that appellant could have buried the dead body on 16.10.1974 itself and could have escaped from the house for ever.
- C PW14 who held the post-mortem examination on 19.10.1974 at 4.00 P.M. stated that the death had taken place 64 to 80 hours before post-mortem examination. According to this opinion the murder was committed some time on 16.10.1974. It is difficult to believe that a person who had committed the murder and had left the dead body in one of the rooms, will be visiting
- D the said house again and again for three days only to bury the dead body in the same house after getting a pit dug.

- Why and how PWs 2 and 3 went to inform PW19, the owner of the house about the foul smell when the appellant was not there, has remained a mystery. The evidence of PW2 and PW3 cannot be accepted because they
- E allege a highly improbable conduct on the part of the appellant. On behalf of the appellant, it was suggested that PW19 took undue interest, no sooner dead body was discovered, to save his son PW29, because the portion of the house till 16.10.1974, was not in exclusive possession of the appellant. It was pointed out that the PW19 produced the main witnesses PW1, PW2 and PW3, the same night before PW31, the Sub-Inspector, which was
- F unusual in the facts and circumstances of the case.

- So far the next circumstantial evidence alleged against the appellant is that he was seen with the deceased on a motorcycle on 16.10.1974 at bus stop of village Adchini by Jit Kumar (PW9). PW9 has stated that he had
- G seen the appellant with the victim on 16.10.1974 going on a motorcycle. But the Trial Court rejected his evidence saying that he was admittedly related to the deceased. The father and other relations of the deceased were searching him since 16.10.1974, but PW9 never informed them that he had seen Gulshan Rai on 16.10.1974 going on a motorcycle along with the
- H appellant. The Trial Court pointed out that he was a stock witness, as he

had appeared in more than five cases for the prosecution, which fact was denied by him, but later proved. The High Court accepted the evidence saying that his evidence cannot be rejected merely on the ground that he was related to the victim. According to us, the Trial Court was justified in not placing reliance on the evidence of PW9, for the reasons mentioned above. Any person related to the deceased in a small place like Adchini, in normal course would have informed, when search was being made for the victim, for three days, that he had seen him going with the appellant on a motorcycle. Apart from that in normal course no one is required to appear for five times, as a prosecution witness in different cases. This fact was denied by PW9 for reasons best known to him, but the Trial Court on basis of material on record found it to be correct.

So far the recovery of articles from the house in question, including a glass with the finger prints of the appellant is concerned, it is not of much consequence. The appellant being a class friend of PW29, the son of the owner of the house, was visiting off and on, the rooms which he had taken on rent. But the fact remains, that if the appellant had come in exclusive possession of those rooms, in normal course, he would have brought furnitures and other articles including the readymade garments for which he had taken the rooms from PW19. We have already mentioned above that no explanation has been furnished on behalf of the prosecution that if the appellant was in such a pressing need, for the remaining two rooms, why the readymade garments had not been stored in the three rooms which the appellant had taken on 10.9.1974. Once the prosecution case, that five rooms were in exclusive possession of the appellant has been rejected, merely certain articles, belonging to the appellant were found in one of the rooms, shall not be an evidence of conclusive nature, on basis of which it can be held that the appellant had committed the murder of Gulshan Rai.

The High Court has relied on the signs of dragging of the body starting from the room upto the wall of the compound. This circumstance does not directly connect the appellant with the murder of Gulshan Rai. Whosoever might have committed the murder of Gulshan Rai in the room, must have dragged him from the room to the courtyard in order to put the dead body, in the pit. Some body did that. But the question is whether it has been established that it was done by the appellant.

Then remains the extra judicial confession alleged to have been made

A by the appellant before PW8, Hans Raj, a scooter driver and PW30, Uttam Singh, that he had hit the victim with a 'Sarya' at Adchini. The Trial Court pointed out that PW30 did not support the prosecution story and was accordingly declared hostile. About PW8, Hans Raj, the Trial Court observed that his evidence did not inspire confidence because the defence

B had successfully proved on basis of records that he was a stock witness of police and had appeared in more than 15 cases. The Trial Court further pointed out that he had been confronted, with his statement recorded in the Court of Shri J.D.Jain, Additional Sessions Judge, Delhi, wherein he had admitted that he had been cited as prosecution witness in about 30 cases by the police. The Trial Court further said that admittedly this

C witness was not on visiting terms with the appellant. He knew the appellant casually, being a resident of Pahar Ganj where the appellant was living about 14 years earlier. In this background, it was highly improbable, that the appellant will make extra judicial confession before PW8.

D The only remaining circumstance to be dealt with is the alleged disclosure made by the appellant and recovery of blood stained clothes belonging to the appellant at his instance. In view of Section 27 of the Evidence Act, there was no difficulty in accepting this evidence and to consider the same along with other circumstances if proved beyond all

E reasonable doubt. But the unfortunate feature of the present case, which has also been noticed by the Trial Court, is that many witnesses who can be said to be the stock witnesses to the police, have been produced on behalf of the prosecution to prove important circumstances. In this background the Court has to be very cautious about the investigation done by

F the police in this case. The circumstance regarding the recovery of the blood stained clothes belonging to the appellant, on the disclosure made by him, has to be examined in the background of the witnesses like PW9, PW8 and 30, PWs2 and 3, on whom it is difficult to place any reliance for the reasons mentioned above. It is not possible to hold that the vital links of the prosecution case which are necessary to be proved before a finding

G can be recorded, that the chain of evidence is complete, have been proved beyond reasonable doubt. If the evidence of PWs2 and 3 are rejected, then the main circumstantial evidence that the appellant was in exclusive possession of the room in question and he had got the pit dug by PWs2 and 3 in which the dead body of the victim was found in the night of 18.10.1974,

H shall be deemed to have not been proved.

A
Apart from that the other two important circumstances, which connection the appellant, with the murder of Gulshan Rai i.e. he was seen with Gulshan Rai on 16.10.1974 and that he made extra judicial confession before PW8 and PW30, having been rejected, his conviction cannot be sustained merely on recovery of some of the articles belonging to the appellant in one of the rooms in question and alleged recovery of his clothes with blood stained from the residence of the appellant. B

For the reasons mentioned above, benefit of doubt has to be given to the appellant. Accordingly, the appeal is allowed. The conviction and sentence passed against the appellant are set aside. We are informed that the appellant has remained in jail for about seven years. However, during the pendency of this appeal, he has been directed to be released on bail. C
His bail bonds are cancelled.

REVIEW PETITION (CRL.) NO. 241 OF 1981

The Review Petition (Crl.) No. 241 of 1981 is allowed and the order dated 12.10.1979 passed by this Court in Special Leave Petition (Criminal) No. 2123 of 1979 is recalled. D

T.N.A.

Appeal allowed.