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ALAMGIR

v.

STATE (NCT. DELHI)

NOVEMBER 12, 2002

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[UMESH C. BANERJEE AND B.N. AGRAWAL, JJ.]

Penal Code, 1860—Section 302—Murder—Circumstantial evidence—Conviction by Courts below—On appeal, held, the chain of events of the present case pointedly point out to the guilt of the accused—Evidence Act, 1872—Circumstantial evidence.

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Criminal Trial:

Interested witness—Evidentiary value of—Held, interested witness by itself cannot be a ground to reject the evidence on record—Test of its creditworthiness or acceptability ought to be the guiding factor.

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Expert opinion—Evidence of Handwriting expert—Reliability on—In absence of corroboration—Held, there is no rule of law or rule of prudence that opinion must never be acted upon unless substantially corroborated.

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The appellant-accused came to visit Delhi alongwith his wife (deceased) and stayed in a hotel on 18th September, 1991. On 19th September appellant left the hotel, locking his wife in the room. When the appellant did not return and there was no response from the room, PW1 in the presence of PW3 opened the room with duplicate key and found the deceased dead in the room. There were two slips of paper, handwriting whereon was identified by the handwriting expert as that of the appellant. The appellant, thereafter was arrested at Bombay and key of the room and ticket from Delhi to Bombay dated 19th September, 1991 was recovered from him. During trial PW6 in her evidence deposed that the appellant had telephonically informed her that the deceased had died in a bus accident and had been burried at Nizamuddin. However, this statement of hers was not in her statement under Section 161 Cr.P.C. Trial Court convicted the appellant under section 302 IPC. The conviction was confirmed by High Court.

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In appeal to this Court it was contended by appellant that the present

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case was a case of blind murder and the prosecution has fabricated the case against the appellant; that prosecution has failed to link up the chain of events; that the evidence of PWs 1 and 23 could not be relied on as none of them had identified the appellant; that evidence of PW6 could not be relied on since she was interested witness and since her evidence was not available in her statement under Section 161 Cr.P.C.; and that opinion of handwriting expert was not admissible. A B

Dismissing the appeal, the Court

HELD: 1. In view of the law as regards acceptability of circumstantial evidence and in view of the facts and circumstances of the present case, the events pointedly point out the guilt of the accused. The circumstances of the instant case, if read with the evidence of PW.6, as to the date of departure of the accused with his wife from Bombay to Delhi and the telephonic message after two days that the deceased had died in a bus accident and that she had been cremated at a cremation ground in Nizamuddin-would form a chain without there being any snap. C D [93-E; 94-G]

Hanumant Govind Nargundkar and Anr. v. *State of Madhya Pradesh,* AIR (1952) SC 343; *MG Agarwal and Anr.* v. *State of Maharashtra,* AIR (1963) SC 200; *Pawan Kumar* v. *State of Haryana,* [2001] 3 SCC 628 and *Sudama Pandey and Ors.* v. *State of Bihar,* [2002] 1 SCC 679, relied on. E

2.1. Interested witness by itself cannot possibly be a ground to reject the evidence on record. The test of creditworthiness or acceptability, ought to be the guiding factor and if so, question of raising an eye - brow on the reliability of witness being an interested witness would be futile-in the event the evidence is otherwise acceptable, there ought not to be any hindrance in the matter of prosecutor's success. The evidence must inspire confidence and in the event of unshaken credibility, there is no justifiable reason to reject the same. [95-A-C] F

2.2. Though the piece of evidence of PW6 was not available in the statement of the witness under Section 161 Cr.P.C., but it does not take away the nature and character of the evidence in the event there is some omission on the part of the police official. This cannot be taken recourse to as amounting to rejection of an otherwise creditworthy and acceptable evidence. The evidence of PW.6 ought to be treated as creditworthy and acceptable. G H

3. There is no rule of law, nor any rule of prudence which has crystallized into a rule of law that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated. Since human judgment cannot be said to be totally infallible, due caution shall have to be exercised and the approach ought to be that of care and caution and it is only upon probe and examination the acceptability or creditworthy of the same depends. The courts below did place, upon consideration of all relevant facts and material on record, reliance on the opinion of the handwriting expert and there is no reason to record a contra finding.

[100-B-C]

Murari Lal **v.** *State of Madhya Pradesh,* **[1980] 1 SCC 407, relied on.**

Magan Bihari Lal **v.** *State of Punjab,* **[1977] 2 SCC 210, distinguished**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 202 of 2001.

From the Judgment and Order dated 7.4.2000 of the Delhi High Court in Crl. A. No. 9 of 1995.

Jaspal Singh and Ms. Manjula Gupta, for the Appellants.

Ashok Bhan, R.K. Rathore, Ms. Varuna B. Gugnani and D.S. Mehra, for the Respondent.

The Judgment of the Court was delivered by

BANERJEE, J. The matter under consideration presently before this Court stands out to be singularly singular on the plea of fabrication by the defence against the prosecutor. The High Court of Delhi negated the same and dismissed the appeal against the conviction under Section 302 IPC and the sentence of imprisonment for life along with fine.

It is at this juncture convenient to advert briefly to the prosecution case as below :

Alamgir, the appellant herein being a resident of Pakistan was married to Ms. Hazra (known by the name of Halima after marriage). The factual score depicts that on 17th September, 1991, the appellant came to Delhi along with his wife Hazra @ Halima and they checked in a hotel at Darya Ganj (Royal Inn Guest House) on 18th September, 1991 at about 8.50 p.m. Upon registration in the guest registration book, the appellant and his wife, who was in Burqa, were allotted Room No.107 and the key was handed over

to Alamgir. On 19th September, 1991, Alamgir, however, went out and brought some break-fast and at or about 10.15 in the morning, he reported at the counter informing therewith that the wife being left alone in the hotel room ought not to be disturbed and that he would be back soon. Alamgir, however, the factual score depict, did not return till 20th and the Manager of the hotel by reason of not being able to get any response from the room after several attempts, opened the room with the duplicate key in the presence of one Dinesh Chand and found that the deceased was lying on the bed covered with a red dupatta. Immediately thereafter, however, the police was informed and Sub-inspector Rajbir Singh reached at the hotel and recorded the statement of the Manager of the hotel. The Crime Branch was called along with photographer and upon completion of all necessary formalities, the dead body was sent for post-mortem and the FIR being No.357/91 was registered around 12.25 in the afternoon.

Incidentally, the police found two slips near the dead body. one of the papers indicated "7 A Jaitkar House Tandel Street Room No.3, Mal Bazar, Bombay 3" and something was written in Urdu thereon. The other paper slip was a photo of receipt A.V. 187318, 18.7.90 bearing photo and signatures of Alamgir. On its backside 50690, 235472, and Assistant Director, D.R.O. Karachi (West) was printed and sealed respectively. Some injury marks were noticed on the neck of the deceased.

The further factual score depicts that on 21st September, 1991 on receipt of some secret information at about 2.20 p.m. by the CID, Bombay Unit, at 2.45 p.m. Inspector Naresh Talvalkar along with Inspector Dhoble and other Constables reached in front of Caf Rahim Restaurant and found a person standing opposite Caf Rahim Restaurant. They arrested that person, namely, the accused Alamgir. On his personal search the accused was found holding a brown colour rexine pouch in his hand containing a key ring with a brass letter 'R' and No.107 written on it along with passport of the accused, residential permit as well as Pakistani I card of the accused and Pakistani passport of Ms. Halima Noor Jamal, her residential permit and one copy of I. Card form of the Halima and ticket from Delhi to Bombay along with 100 rupee notes in Indian currency and Pakistani currency. Assistant Police Commissioner, Darya Ganj, Delhi was contacted and it was confirmed that accused Alamgir was wanted in the case under Section 302 *IPC in FIR No.* 357 of 1991.

On 21st September, 1991 Delhi Police received the information of

A arrest of accused Alamgir. SI Rajbir Singh was deputed to leave for Bombay for investigation. The post mortem examination was also conducted on 21st September, 1991. However, the body was directed to be preserved. Necessary formalities were completed by the Bombay Police. Accused was produced on 22nd September, 1991 before the Additional CMM, Bombay. On 24th September, 1991 Delhi Police arrived in Bombay. All the articles which the B Bombay Police had recovered from the accused were handed over to Delhi Police. SI Rajbir Singh met Inspector Talvalkar on 24th September, 1991, formally arrested accused Alamgir, conducted his personal search, produced before MM Mr. Shinde and obtained the remand. He interrogated the accused, who made certain disclosure statements.

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According to the prosecution, accused Alamgir from Delhi had given a telephonic call to Shamim Bano, sister of the deceased at Bombay and asked her to call his father who had come from Pakistan. But his father was not available in the house. Alamgir also told that Hazra had died in bus accident. Shamim Bano told all these facts to the police after three-four days D at Bombay.

Smt. Safiya Tazim Ali, mother of the deceased stated that Hazra was married six-seven months prior to murder. Alamgir, accused told her (mother-in-law) and other members of her family that Hazra had died in a bus accident and she had been cremated at the cremation ground in Nizamuddin. About E 3 or 4 days prior to the arrival of the police at the house of Smt. Safiya Tazim Ali, he had come to her house in Bombay. He had kept two bags in her house which were recovered by the police. Both the bags contained clothes of her deceased daughter.

F It is on these state of facts, the charge was framed and as noticed above, the learned Addl. Sessions Judge, Delhi found accused guilty and sentenced imprisonment for life which stands confirmed by the High Court and hence the appeal by the grant of special leave under Article 136 of the Constitution.

G The learned Senior Advocate, Mr. Jaspal Singh, has been able to state the proposition of law with due clarity. It has been contended that in the event of there being only circumstantial evidence, it is well settled that those circumstances must be proved to be such as to be conclusive of the guilt of the accused and incapable of explanation on any hypothesis consistent with the innocence of the accused. It has been contended further that it is on this H score the law seems to be well settled as well, to wit that the Courts will be

well advised in case of circumstantial evidence to be watchful and to ensure that conjectures and suspicions do not take place of legal proof. It has been the appellant's contention that the prosecution has utterly failed to link up the chain and as a matter of fact the snap in the chain is not very far to seek, thus warranting an order of acquittal and the High Court has fallen into a manifest error in regard thereto. The evidence of PW.1 and PW.23 being Madan Singh and Dinesh Chand was taken recourse to. It is on this score, it has been contended that (a) None of them has identified the appellant; (b) None of them has stated that it was the appellant who had checked in on 18.9.1991; (c) None of them has stated that it was the appellant who had checked out on 19.9.1991 at 8.30 A.M.and (d) Rather both the witnesses have stated that appellant was not the person who had checked in on 18.9.1991 or who had checked out on 19.9.1991 at 8.30 A.M. and drawing inspiration therefrom, Mr. Singh in support of the appeal contended that there is thus no direct evidence available to prove that it was the appellant who had checked in on 18th September, 1991 or had left the hotel on 19th September, 1991. Admittedly, there is no difficulty in appreciating the submissions of Mr. Singh. Availability of direct evidence is not there but what about the circumstances ? Before doing so, be it noted that the evidence of PW.6, Sahmim Bano as to the date of departure of the accused with his wife Hazra @ Halima from Bombay to Delhi and the subsequent telephonic message that Halima died in a bus accident and that cremation has taken place in Nizamuddin stand out to be a rather significant component of the chain of evidence.

(a) The appellant came to visit Delhi along with his wife Hazra @ Halima leaving Bombay on 17th September, 1991.

(b) On 18th September, 1991 at about 8.50 p.m. both of them claimed to be husband and wife. Alamgir, appellant entered his name and address in the guest register and received key of Room No.107 and stayed in Room No.107 in Royal Inn Guest House, Netaji Subhash Marg, Daryaganj, Delhi.

(c) On 19th September, 1991 in the morning at 8.30 a.m., Alamgir left the guest house locking his wife in the room and did not return thereafter.

(d) The appellant telephonically informed PW6, Shamim Bano that the deceased died in a bus accident and was buried in Nizamuddin and thereafter the appellant left Delhi for Bombay.

(e) The appellant's wife was found dead due to strangulation in Room No.107 on opening of the same with duplicate key on 20th September, 1991.

(f) The appellant was arrested at Bombay on 21st September, 1991 and key of the room was recovered from him along with ticket from Delhi to Bombay dated 19th September, 1991 proving that he after killing his wife instead of taking her care, had left for Bombay on 19th September, 1991. Only beyond the range of a reasonable doubt, of course, the expression 'reasonable doubt' is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the judge.

The question for consideration is thus as to whether the circumstances noticed above would form a complete chain of events without any snap and pointedly point to the accused as the guilty person and to no-one else. In the event there is an answer in the affirmative, question of interference with the order of the High Court would not arise. Incidentally, the High Court did emphasize on the true and correct meaning of the phraseology 'reasonable doubt' to be attributed thereon and it is on this score, the High Court records:

> "Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the judge."

We are, however, not expressing any opinion with regard thereto. Suffice it to say that sufficiency of moral certainty itself is a matter for deliberation and since the matter has not been addressed to us on that score, expression of opinion on the same would not arise.

The circumstances noticed above, if read with the evidence of PW.6, Shamim Bano as to the date of departure of the accused with his wife Hazra @ Halima from Bombay to Delhi and the telephonic message after two days that Halima had died in a bus accident and that she had been cremated at a cremation ground in Nizamuddin this piece of evidence, as noticed above, if read along with the circumstances noticed above, would form a chain without there being any snap. Strenuous submissions have been made as regards the admissibility of the Handwriting Expert's opinion as also a challenge thrown to the non-admissibility of the entire evidence of Shamim Bano, PW.6. This evidence of Shamim Bano has been challenged on two counts: on the first

Shamim Bano, being the sister of Halima, was an interested witness and secondly, she did not say so in a statement before the police under Section 161 Cr.P.C. Interested witness by itself cannot possibly be a ground to reject the evidence on record. The test of creditworthiness or acceptability, in our view, ought to be the guiding factor and if so, question of raising an eye-brow on the reliability of witness being an interested witness would be futile in the event the evidence is otherwise acceptable, there ought not to be any hindrance in the matter of prosecutor's success. The evidence must inspire confidence and in the event of unshaken credibility, there is no justifiable reason to reject the same. It is on this score the issue of interested witness thus stands negated, as raised by the appellant. The second limb pertains to the statement under Section 161 Cr.P.C. Admittedly, this piece of evidence was not available in the statement of the witness under Section 161 Cr.P.C., but does it take away the nature and character of the evidence in the event there is some omission on the part of the police official. Would that be taken recourse to as amounting to rejection of an otherwise creditworthy and acceptable evidence the answer, in our view, cannot but be in the negative. In that view of the matter, the evidence of PW.6 thus ought to be treated as creditworthy and acceptable and it is to be seen the effect of such an acceptability.

Coming back to Mr. Jaspal Singh's submissions as regards prosecution's fabrication of evidence, two redeeming features ought to be noticed, namely:

(a) PW.1 Madan Singh after several knocks at the door and having failed to obtain any reply therefrom, opened the room with a duplicate key and found a person lying on the double bed covered with red cloth-the room was locked and police was informed. The arrival of the police people at the hotel led the opening of the door and the dead body of a female was recovered with two slips of paper noticed hereinbefore. The handwriting and signatures stand to be proved by the Handwriting Expert as that of the appellant herein. The High Court did not find any reason to discard this piece of evidence, neither we find any justifiable reason to discard the same either. It is on this score that Mr. Jaspal Singh has been rather emphatic that Handwriting Expert's opinion being a weak piece of evidence ought not to be relied upon and placed reliance in support thereof the decision of this Court in *Magan Bihari Lal* v. *The State of Punjab,* [1977] 2 SCC 210. Since detailed submissions have been made on this score, we think it fit and proper to detail out the observations of this Court in *Magan* (supra). This Court in para 7 of the Report stated as below :

"7. In the first place, it may be noted that the appellant was at the material time a Guard in the employment of the Railway Administration with his headquarters at Agra and he had nothing to do with the train by which Wagon No. SEKG 40765 was despatched from Munda to Bikaner, nor with the train which carried that wagon from Agra to Ludhiana. He was not a Guard on either of these two trains. There was also no evidence to connect the appellant with the theft of the blank Railway Receipt at Banmore Station. It is indeed difficult to see how the appellant, who was a small employee in the Railway Administration, could have possibly come into possession of the blank Railway Receipt from Banmore Station which was not within his jurisdiction at any time. It is true that B. Lal, the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex.PW10/A was that of the same person who wrote the specimen handwritings, Ex. PW 27/37 to 27/57, that is the appellant, but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra* v. *State of U.P.,* AIR (1957) SC 381) that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad Mishra* v. *Md. Isa,* AIR (1963) SC 1728 that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar Banerjee* v. *Subodh Kumar Banerjee,* AIR (1964) SC 529 where it was pointed out by this court that expert evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin* v. *State of M.P.,* AIR (1967) SC 1326 and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert

and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the same view is also echoed in the judgments of English and American courts. Vide *Gurney* v. *Langlands,* (1822, 5 B and Ald 330) and Matter of Alfred Foster's Will (34 Mich 21). The Supreme Court of Michigan pointed out in the last mentioned case :

> Every one knows how very unsafe it is to rely upon any one's opinion considering the niceties of penmanship Opinions are necessarily received, and may be valuable, but at best this kind of evidence is a necessary evil.

We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence, being opinion evidence is by its very nature, weak and infirm and cannot of itself form the basis for a conviction. We must, therefore, try to see whether, in the present case, there is, apart from the evidence of the handwriting expert B. Lal, any other evidence connecting the appellant with the offence."

In our view, however, reliance in Magan (supra) is rather misplaced in the contextual facts since no conviction is based on the opinion of the handwriting expert but admittedly it can be relied upon when supported by other items of internal and external evidence. The handwriting expert's opinion simply corroborates the circumstantial evidence and as such we are unable to record our concurrence with the submissions of Mr. Singh on this score.

Significantly, this Court in *Murari Lal* v. *State of Madhya Pradesh,* [1980] 1 SCC 704 in no uncertain terms observed that the hazard in acceptance of opinion of an expert is not because it is unreliable evidence, but because human judgment is fallible. Needless to record that the signs of identification of handwriting have attained more or less a state of perfection and the risk of an incorrect opinion is practically non-existent. This Court went on further to record that doubting the opinion of a handwriting expert ought to be a far cry and insistence upon further corroboration as an invariable rule does not seem to be a justifiable conclusion. In continuation of the above noted principle, this Court went on to further examine as regards judicial precedence and in that vein stated in paragraph 7 of the Report as below :

"7. Apart from principle, let us examine if precedents justify

A invariable insistence on corroboration. We have referred to Phipson on Evidence, Cross on Evidence, Roscoe on Criminal Evidence, Archibald on Criminal Pleadings, Evidence and Practice and Halsbury's Laws of England but we were unable to find a single sentence hinting at such a rule. We may now refer to some of the decisions of this Court. In *Ram Chandra* v. *U.P. State,* AIR (1957) SC 381, Jagannadhadas, J. observed : "It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction" (emphasis ours). "May" and "normally" make our point about the absence of an inflexible rule. In *Ishwari Prasad Misra* v. *Mohammad Isa,* AIR (1963) SC 1728 Gajendragadkar, J. observed: "Evidence given by experts can never be conclusive, because after all it is opinion-evidence", a statement which caries us nowhere on the question now under consideration. Nor, can the statement be disputed because it is not so provided by the Evidence Act and, on the contrary, Section 46 expressly makes opinion-evidence challengeable by facts, otherwise irrelevant. And as Lord President Cooper observed in *Davis* v. *Edinburgh Magistrate,* (1953) SC 34 : "The parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert."

As regards the decision of Magan (supra) this Court in paragraph stated as below :

"10. Finally, we come to *Magan Bihari Lal* v. *State of Punjab* [1977] 2 SCC 210), upon which Sri R.C. Kohli, learned counsel, placed great reliance. It was said by this Court :

> . . . . but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra* v. *State of U.P.,* AIR (1957) SC 381 that it is unsafe to treat expert handwriting opinion as sufficient basis

for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad Mishra* v. *Md. Isa,* AIR (1963) SC 1728 that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar Banerjee* v. *Subodh Kumar Banerjee,* AIR (1964) SC 529 where it was pointed out by this court that expert evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin* v. *State of M.P.,* AIR (1967) SC 1326) and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.

The above extracted passage, undoubtedly, contains some sweeping general observations. But we do not think that the observations were meant to be observations of general application or as laying down any legal principle. It was plainly intended to be a rule of caution and not a rule of law as is clear from the statement "it has almost become a rule of law'. "Almost", we presume, means "not quite". It was said by the Court there was a "profusion of precedential authority" which insisted upon corroboration and reference was made to *Ram Chandra* v. *State of U.P., Ishwari Prasad* v. *Mohammad Isa, Shashi Kumar* v. *Subodh Kumar and Fakhruddin* v. *State of M.P.* We have already discussed these cases and observed that none of them supports the proposition that corroboration must invariably be sought before opinion-evidence can be accepted. There appears to be some mistake in the last sentence of the above extracted passage because we are unable to find in *Fakhruddin* v. *State of M.P.* any statement such as the one attributed. In fact, in that case, the learned Judges acted upon the sole testimony of the expert after satisfying themselves about the correctness of the opinion by comparing the writings themselves. We do think that the observations in *Magan Bihari Lal* v. *State of Punjab,*

A must be understood as referring to the facts of the particular case."

In fine in *Murari Lal* (supra) this court stated that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated. We feel it expedient to record our concurrence B therewith, though, however, we hasten to add that since human judgment cannot be said to be totally infallible, due caution shall have to be exercised and the approach ought to be that of care and caution and it is only upon probe and examination the acceptability or creditworthy of the same depends. The learned Sessions Judge as also the High Court did place, upon C consideration of all relevant facts and material on record, reliance on the opinion of the handwriting expert and we do not see any reason to record a contra finding.

(b) Misleading telephonic information about the death of the deceased to sister and mother of the deceased and the evidence on this score seems to D be rather categoric and creditworthy. It is on this score, the High Court also placed reliance and did not think it fit to discard the testimony of PW.6, Shamim Bano on this score.

The two counts mentioned above have in fact cemented the fate of this appeal. Identity of the accused person stands challenged by Mr. Jaspal Singh E and while recording acceptance of a factum of murder, it has been the definite contention that it is a blind murder if that be so then why the misleading information to the family members of the deceased is it to obviate a detection so as to enable him to escape the rigors of law or a genuine and innocent statement of the accused : if the death had been caused, as reported to the F family members of the deceased or the burial there would have been some documentary evidence in support thereof : the street accident must have been rather fatal and burial also cannot take place without proper documentation unfortunately, there is no documentary support. This is, however, on the opposition that the evidence of PW.6 stands accepted. At this juncture we, however, feel it expedient to record that in fact on a plain look at the evidence G one would take to conclude its acceptability in creditworthiness rather than its rejection. It is on this score, the High Court was pleased to record its opinion upon detailing out the circumstances and we do also feel it inclined to record that the circumstances noticed above cannot but lend concurrence to the observations of the High Court that the matter in issue cannot but be H termed to be a brutal and gruesome murder of Hazra by the accused person.

Before proceeding with the matter further, it would be convenient to note the well established rule in criminal jurisprudence as regards the acceptability of the circumstantial evidence and the rule of the law courts in regard thereto. A

The word of caution introduced in the judgment of this Court about five decades ago in that direction however still stands as an acceptable guide. This Court in *Hanumant Govind Nargundkar and Anr.* v. *State of Madhya Pradesh*, AIR (1952) SC 343 stated: B

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

Subsequently, the Constitution Bench of this Court in *MG Agarwal and Anr.* v. *State of Maharashtra*, AIR (1963) SC 200 in the similar vein and without any contra note stated the law with utmost lucidity in the manner noted below: E

> "It is a well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. There is no doubt or dispute about this position. But in applying this principle, it is necessary to distinguish between facts which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts there is no scope for the application of the doctrine of benefit of doubt. The F G H

A court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt."

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Similar however is the opinion of this Court in *Pawan Kumar* v. *State of Haryana,* [2001] 3 SCC 628 in which one of us (U.C. Banerjee, J.) was a party. The opinion of the Court runs as under:

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"Incidentally, success of the prosecution on the basis of circumstantial evidence will however depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. While. however, it is true that there should be no missing links, in the chain of events so far as the prosecution is concerned, but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without, however, any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted and the law is well settled on this score, as such we need not dilate much in that regard excepting, however, noting the observations of this Court in the case of *State of U.P.* v. *Ashok Kumar Srivastava,* AIR (1992) SC 840 wherein this Court in paragraph 9 of the report observed:-

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"This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negatived on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established

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must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise." A B

The other aspect of the issue is that the evidence on record, ascribed to be circumstantial, ought to justify the inferences of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. The observations of this Court in the case of *Balwinder Singh* v. *State of Punjab,* AIR (1987) SC 350 lends concurrence to the above." C

In a more recent decision of this Court in *Sudama Pandey and Ors.* v. *State of Bihar,* [2002] 1 SCC 679 the law as noticed above and to the same effect stands very felicitously expressed. D

On the basis of the law and the factual score as above, in particular the circumstances tabulated hereinbefore, the issue thus arises as to whether involvement of the accused can be doubted in any way or the events pointedly point out the guilt of the accused person. The High Court answered it in the second alternative and upon consideration of the entire matter we do feel it expedient to record our concurrence with the reasons and conclusions as put forth in the judgment impugned. E

In that view of the matter, this appeal fails and is dismissed.

K.K.T. Appeal dismissed. F