SHANTABAI & ORS. A

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 372 of 2006)

MARCH 3, 2008

B

(P.P. NAOLEKAR & LOKESHWAR SINGH PANTA, JJ.)

Penal Code, 1860; Ss. 34, 147, 148 and 302 r/w.s.149:

Murder – Trial Court convicting accused wife, her husband and their son for committing murder of deceased relying on circumstantial evidence – Affirmed by High Court – Correctness of – Held: Prosecution witnesses made a bald and sweeping statement alleging illicit relationship of appellant No.1 with the deceased for the last many years – Testimony of prosecution witnesses in connection thereof unconvincing and unbelievable – No evidence led by prosecution to establish that the deceased visited the house of accused on the day of incident – Thus, it would not be safe to convict accused No.1 for committing murder of the deceased merely because his dead body was found in front of the house of accused persons – Testimony of PW5, that he saw accused persons going hurriedly towards the bus stand, is not free from doubt – His evidence is hearsay evidence, therefore, it cannot be accepted without corroboration as he does not appear to be truthful witness – I.O. failed to collect finger prints on alleged weapons of crime – Moreover, weapons so collected found lying in open space – Prosecution failed to establish that weapons recovered had been used by accused in the commission of crime – Moreover, blood-group detected on clothes seized belonging to the appellants did not tally with the blood-group of blood found on the clothes of the deceased and also on the articles seized by I.O. – No cogent, satisfactory and convincing evidence led by prosecution to complete the chain of circumstances holding accused-appellants guilty of

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A *committing murder of the deceased beyond reasonable doubt – High Court was not justified in upholding conviction of A1, A2 and A3on surmise and hypothesis – Hence, conviction and sentences of the accused set aside and they are acquitted of the charges framed against them – Circumstantial evidence*
B *– Testimony of.*

According to the prosecution, accused-appellant A1, wife of A2, had illicit relationship with the deceased for the last so many years. On the fateful day, the deceased had left his house in the morning and as he did not return
C **till late evening, his brother, PW1, enquired about him from PW5, a workman in a flour mill in the nearby area, who informed that he saw accused persons hurriedly going towards the bus stand. PW1, along with some other village people then went to the house of A1, where he found the**
D **dead body of his brother lying in the compound of the house. He also noticed injuries on the body of the deceased. PW1 lodged a report in the police station on the next day. On the basis of the report, an FIR was registered by the police naming A1, A2-her husband, A3-**
E **son, A5-daughter and A4-husband of A5 as culprits for committing the murder of the deceased. After completion of the investigation by the Investigating Officer and after receipt of the post mortem report and Chemical Analysis report, charge sheet was filed by the Police against the**
F **accused persons for the commission of the crime. Trial Court framed the charges against them for committing the offence under Sections 147, 148 and 302, IPC, read with Section 149, IPC and found A-1, A-2 and A-3 guilty of committing murder of the deceased and convicted and**
G **sentenced them accordingly for committing the offences punishable under Section 302 IPC, read with Section 34, IPC. However, A-4 and A-5 have been acquitted of the charges. Being aggrieved, A-1, A-2 and A-3 preferred an appeal before the High Court. The High Court confirmed the conviction and sentence. Hence the present appeal.**
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Accused-appellants contended that there was no direct evidence against them and the Trial Court as well as the High Court have committed gross error in convicting them on the basis of highly unbelievable, insufficient and unconvincing evidence led by the prosecution; that there is not an iota of evidence on record to prove that on the day of occurrence, the deceased had visited their residence nor the prosecution has proved beyond reasonable doubt that A-1 had illicit relations with the deceased for the last 10 to 15 years; that no motive whatsoever has been proved by the prosecution from the evidence on record; and that the findings of both the courts below that no explanation has been given by them in regard to their absence of accused from their house on the day of incident when PW-1 and other villagers found the dead body of the deceased in the courtyard of their house, are based upon surmises and conjectures which cannot be taken as incriminating circumstance holding them guilty of the murder of the deceased.

Respondent-State submitted that the reasons given by the Trial Court as well as by the High Court in recording the order of conviction of the appellants are based upon proper appreciation of evidence led by the prosecution in the case; that the evidence of PW-5, that on the day of the occurrence he saw the accused hurriedly going to the Bus Stand and thereafter they were not found in their house where the dead body of the deceased was lying, would suggest that the appellants had left their house after having committed the murder of the deceased; and that the evidence of the prosecution witnesses is cogent, clear and satisfactory with the hypothesis of the guilt of the appellants.

Allowing the appeal, the Court

HELD: 1.1 In the present case, there is no direct evidence to connect A-1, A-2 and A-3 with the commission

A **of the offence and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy certain tests, viz. the circumstances from which an** B **inference of guilt is sought to be drawn, must be cogently and firmly established; that those circumstances should be of definite tendency unerringly pointing towards guilt of the accused; that the circumstances, taken cumulatively, should form a chain so complete that there** C **is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and that the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be** D **consistent with the guilt of the accused but should be inconsistent with his innocence. (Para – 11) [725-H; 726-A-E]**

Gambhir vs. State of Maharashtra **AIR (1982) SC 1157;** E *Rama Nand vs. State of Himachal Pradesh* **AIR (1981) SC 738;** *Prem Thakur vs. State of Punjab,* **AIR (1983) SC 61;** *Earabhadrappa vs. State of Karnataka,* **AIR (1983) SC 446;** *Gian Singh vs. State of Punjab,* **AIR (1987) SC 1921;** *Balvinder Singh vs. State of Punjab* **AIR (1987) SC 350 and** *Hanumant Govind Nargundkar vs. State of M.P.* **AIR (1952) SC 3443 –** F **relied on.**

Sharad Birdhichand Sarda vs. State of Maharashtra **(1984) 4 SCC 116;** *C. Chenga Reddy vs. State of A.P.* **(1996) 10 SCC 193;** *Sashi Jena & Ors. vs. Khadal Swain & Anr.* G **(2004) 4 SCC 236 – referred to.**

1.2 PW-1, brother and PW-4, wife respectively of the deceased have made a bald and sweeping statement that A-1 had illicit relations with the deceased for the last about 10 to 15 years before the day of the incident. PW-5, a co-H **villager of the deceased, stated that he heard some village**

people talking about the illicit relations of the deceased with A-1. The evidence of PW-5 is hearsay version and it cannot be accepted without corroboration from the person who told this fact to PW-5. (Para -17) [728-G, H; 729-A, B]

1.3 The testimony of the witnesses in regard to the illicit relations of A-1 with the deceased for the last many years is wholly unbelievable and unconvincing in view of the fact that A-1 has been living with her husband (A-2), her major son (A-3) and daughter (A-5) in the same village in which PW-1, brother of the deceased, his parents and PW-4 (wife) were residing along with her son and two daughters. Had there been any such illicit relations, the entire village people would have come to know about this fact and the parents of the deceased would have never tolerated him to do so, more so when it has come in the evidence of these witnesses that the deceased was maternal uncle of A-1. The prosecution has not examined the parents of the deceased and some other village people in support of this circumstance. (Para – 17) [729-D, E, F]

1.4 The prosecution has also not led any evidence to establish that on the day of occurrence the deceased had visited the house of A-1, A-2 and A-3. This circumstance cannot be said to be of a conclusive nature and tendency to prove that A-1, A-2 and A-3 had murdered the deceased on the day of occurrence because he allegedly had illicit relations with A-1 for the past over many years. In view of this fact, it is not possible to place implicit reliance upon the evidence of PW-1 and PW-4, the selective and interrogated witnesses. (Para – 17) [729-F, G, H; 730-A]

2. The evidence of PW-3, who is one of the *Panchas* of Spot *Panchnama* and Inquest *Panchnama* and also other prosecution witnesses, who saw the dead body of the deceased in the courtyard, would suggest that when they went on the spot of incident, the doors of the house of accused persons were found left open. It has come in the

A evidence of PW-1 that there is a public way on the southern side of the house and there is one *Wada* by the northern side of their house. In his cross-examination, PW1 has stated that there is one open space in between the Wada and house of the appellants and the dead body
B of his brother-deceased was lying in open space near the *Wada*. He also stated that there are some *Kirana Shops* in the eastern side of the open space of the house. This being the position, it is not safe to connect A-1, A-2 and A-3 with the commission of the death of the deceased merely
C because the dead body of the deceased was found in an open space in front of their house, which is a public road. (Para – 18) [730-C-G]

3.1 PW-5, who at the relevant time was serving at a flour mill situated near the Bus Stand, stated that at about
D 6.00 p.m. on the day of incident when he came out of the mill and was going to toilet, he saw A-1, A-2, A-3 and A-5 going hurriedly towards the Bus Stand. On the basis of this evidence, the accused persons are suspected to be the authors of the crime who, according to the prosecution
E version, had left their house after committing the murder of the deceased. Under the circumstances, it cannot be held that A-1, A-2 and A-3 are guilty of the murder of the deceased and throwing his dead body in front of their house in the open place and then hurriedly left their house
F open in order to escape their arrest and final punishment in relation to the commission of heinous offence of murder. (Para – 19) [731-B, C, D]

3.2 If the version of PW5 has been discarded and disbelieved by the Trial Court in regard to A-5 having
G accompanied the appellants when they were stated to be going to bus stand in the evening, the same set of reasoning will apply to A-1, A-2 and A-3 and, therefore, the testimony of this witness is not free from doubt and he does not appear to be a truthful witness to connect A-1,
H A-2 and A-3 with the commission of the crime. Thus, these

circumstances too have not been proved by the prosecution beyond reasonable doubt against the appellants. (Para – 19) [732-A, B, C]

4. The Investigating Officer has not cared to collect the finger prints appeared on the stones and axe, the alleged weapons of offence, at the time of seizure of the articles nor he had taken the finger prints of the appellants for comparison with the finger prints, if any, detected on the alleged weapons of offence. The articles collected by the Investigating Officer from the spot were found lying in the open place which was accessible to all and sundry. The prosecution has not led any evidence to prove that axe, which was the alleged weapon of offence, found on spot in the open place belonged to A-1, A-2 and A-3. Thus, the prosecution has not established beyond reasonable doubt that A-1, A-2 and A-3 had used the recovered weapons of offence in the commission of the crime. (Para – 20) [732-E, F, G, H]

5.1 In the presence of PW9, a Panch witness of seizure panchanama of the clothes, the Police recorded the statement of A-1 in Police Station disclosing the concealment of the clothes in her house. It is the evidence of PW9 that A-1, besides handing over one saree and blouse, she also produced one *dhoti* and one *baniyan* of A-2 (her husband), one saree and one blouse of her daughter (A-5), one *lungi* and one *sando baniyan* of A-3 (son) and one pant and one *bushirt* of A-4 (her son-in-law). The evidence of this witness has to be discarded and straightaway rejected from consideration simply on the ground that he is not an independent witness, but a stock witness of the Police. (Para – 21) [733-A, B, C]

5.2 The Chemical Analyser's report reveals that human blood of Group 'B' was detected on the clothes, which were seized by the Police, allegedly belonging to the appellants. The blood group on those clothes did not

A tally with the blood of Group 'O', which was found on the clothes of the deceased and on the sample of soil, axe, stones, handles. etc which were taken from the spot by the Investigating Officer. The Investigating Officer has categorically stated that when he along with A-1 and *panch* B witnesses had gone in search of the clothes of the appellants, the lock to the door of the house of the appellants was kept with the Police, which was opened by them later on. In this view of the matter, the prosecution has not proved that the clothes, which were allegedly C seized by the Police at the instance of A-1 and lying in the open place, were stained with blood group 'O' of the deceased found on deceased's clothes and on the articles which were seized by the Investigating Officer from the place of occurrence. These circumstances are not proved D by the prosecution by lending cogent, satisfactory and convincing evidence to hold A-1, A-2 and A-3 guilty of the offence. (Para – 21) [733-E, F, G; 734-A]

6. The prosecution has failed to complete the chain of circumstances holding A-1, A-2 and A-3 guilty of the E crime beyond reasonable doubt and the High Court was not justified in upholding the conviction of A-1, A-2 and A-3 on surmises and hypothesis. Hence, the conviction and sentence of A-1, A-2 and A-3 is set aside and they are acquitted of the charges framed against them. F (Paras – 22 & 23) [734-B, C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 372 of 2006

From the final Judgment and Order dated 27.06.2005 of G the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Appeal No. 58 of 1995.

Sudhanshu S. Choudhari (for Naresh Kumar) for the Appellants.

Manish Pitale (for Ravindra Keshavrao Adsure) for the H

Respondent. A

The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. 1. The appellants Shantabai (A-1), Sajan (A-2) and Govind (A-3) have filed this appeal against the judgment and order dated 27.06.2005 B passed by the Division Bench of the High Court of Judicature at Bombay, Bench at Aurangabad, in Criminal Appeal No.58 of 1995 confirming the conviction and sentence for life in respect of the offence punishable under Section 302 of the Indian Penal Code read with Section 34 of the Indian Penal Code [for short C "the IPC"] and a fine of Rs. 2,000/- each with default clause to undergo R.I. for six months awarded by the learned Additional Sessions Judge, Biloli, in Sessions Case No. 160/1993.

2. In all five accused persons were tried by the learned Additional Sessions Judge, Biloli, under Sections 147, 148 and D 302, IPC, read with Section 149, IPC. A-1, A-2 and A-3 were found guilty of the murder of Gunwant Nivrati Dhumale, while Venkar (A-4) and Anshabai (A-5) were acquitted of the charges framed against them.

3. Briefly stated, the case of the prosecution against the E accused persons was that A-1, A-2 and A-3 are residents of village Loni and A-4 and A-5 are residents of village Shilvani. A-1 is the wife of A-2 and A-3 is their son. A-5 is daughter of A-1 and A-2 and A-4 is the husband of A-5. Gunwant Nivrati Dhumale was the brother of complainant Tanaji Nivrati Dhumale. Gunwant F Nivrati Dhumale had been living with his brothers, namely, Tanaji (PW-1); Shivaji; his parents; his wife Mathurabai (PW-4), and two daughters and one son. The prosecution alleged that Gunwant had illicit relations with A-1 since last so many years and this fact was known to all the village people. Gunwant G occasionally used to reside in the house of A-1, A-2 and A-3. A-1 requested Gunwant to stop visiting her house because her daughter (A-5) has now been married to Venkar (A-4) and her son (A-3) has also become major, but Gunwant continued to visit the house of A-1. H

4. On the day of the incident, i.e. on 14.08.1993, Gunwant left his house in the morning and did not return till late evening. Mathurabai (PW-4), wife of Gunwant, informed her parents-in-law about this fact. They asked PW-1 to make search for Gunwant. PW-1 made inquiry about his brother's whereabouts from Namdev (PW-5) at about 6.00 p.m., who at the relevant time was working as a servant in Flour Mill near the bus stand. PW-5 informed PW-1 that he saw A-1, A-2 and A-3 along with A-5 hurriedly going towards the Bus Stand. Thereafter, PW-1 and some other village people went to the house of A-1. They found the doors of the house lying open and the house was empty. They noticed the dead body of Gunwant lying just in the compound of the house of A-1, A-2 and A-3. On visual examination of the dead body of Gunwant, PW-1 and other village people noticed head injury and many other injuries on various parts of his body. On 15.08.1993, PW-1 lodged the report on the basis of which first information report (Ext.38) was registered by the Police Head Constable, Ganesh (PW-10) naming A-1, A-2, A-3, A-4 and A-5, as culprits for the murder of Gunwant.

5. The Head Constable (PW-10), on the next day of occurrence, went to the spot of the incident and collected stones, axe and soil, etc. from the spot *vide* Spot *Panchnama* (Ext.44). He also prepared inquest report of dead body of Gunwant (Ext.43). The dead body of Gunwant was sent for *post mortem* examination to Primary Health Centre, Hanegaon. PW-2, Dr. Hanumant, conducted autopsy on the dead body of Gunwant. He noticed about 13 injuries on his dead body. All the injuries were *ante-mortem*. The post mortem report placed on record is marked as Ext.41. In the opinion of the Doctor, the death of Gunwant occurred because of shock due to cardio respiratory failure, caused by injury to brain and brain hemorrhage. PW-10 seized the blood-stained clothes of the deceased. He handed over further investigation to PSI Mirza Rahematulla Baig (PW-11). PW-11 recorded supplementary statements of PW-1 and other witnesses. He made search of the accused persons in and around village Loni, but they could not be located. On

17.08.1993, he arrested A-1, A-2 and A-3 near village Degloor. On 18.08.1993, he arrested A-4 and A-5 at Markhei. On 31.08.1993, he recorded statements of Hariba (PW-6) and Eknath (PW-7). On 22.08.1993, A-1, while in police custody, made statement (Ext.63) on the basis of which she recovered her clothes and clothes of her husband and son from her house, which were taken into possession vide *Panchnama* (Ext.64). On 29.08.1993, five prosecution witnesses were produced before Shri Nivrati (PW-13), the Special Judicial Magistrate, for recording their statements under Section 164 of the Code of Criminal Procedure (for short 'Cr.P.C.). The clothes of A-1, A-2 and A-3 and the deceased and other articles found on the spot were sent to the Chemical Analyser. The report of the Chemical Analyser (Ext.70) reveals that *ethyl* alcohol was detected in the viscera contents of the deceased. The Chemical Analyser's report (Ext.72) reveals that human blood was detected on the clothes worn by the deceased and the clothes worn by A-1, A-2 and A-3.

6. After completion of the investigation and after receipt of the *post mortem* report and reports of the Chemical Analyser, charge sheet was filed against A-1, A-2, A-3, A-4 and A-5 for the commission of the crime. The learned Judicial Magistrate committed the trial to the learned Additional Sessions Judge, who framed the charges against them for the offence under Sections 147, 148 and 302, IPC, read with Section 149, IPC. The prosecution examined as many as 13 witnesses in support of its case. In their statements recorded under Section 313 of Cr.P.C., all the accused persons denied their involvement in the crime and pleaded false implication on suspicion.

7. The case of the prosecution rests on circumstantial evidence. The prosecution relied upon the following circumstances:

(i) Illicit relations of the deceased Gunwant with Smt. Shantabai (A-1) since last 10 to 15 years;

(ii) The dead body of Gunwant was found in the courtyard

A of the house of A-1, A-2 and A-3 at village Loni;

(iii) A-1, A-2 and A-3 were not found present at their house on 14.08.1993, the day of occurrence, when PW-1 along with other villagers went to their house in search of Gunwant;

B (iv) PW-5, Namdev, had seen A-1, A-2, A-3, A-4 and A-5 going towards the Bus Stand on the evening of 14.08.1993;

(v) Medical evidence;

C (vi) Recovery of the clothes of A-1, A-2 and A-3 from their house; and

(vii) The clothes of A-1, A-2 and A-3 recovered by the Police at the instance of A-1 from their house, were found blood-stained of human blood of Group 'O' in the Chemical D Analyser's report (Ext.71).

8. The Trial Court, on appreciation of evidence, held A-1, A-2 and A-3 guilty of the offence, therefore, they are convicted and sentenced as aforesaid, for the offence under Section 302, IPC, read with Section 34, IPC. However, on the same set of E evidence A-4 and A-5 have been acquitted of the charges. Being aggrieved, A-1, A-2 and A-3 preferred an appeal under Section 374(2) of Cr.P.C. before the High Court and the High Court as stated above, confirmed the conviction and sentence imposed upon them by the Trial Court. Hence, A-1, A-2 and A-3 have F filed this appeal by special leave.

9. Mr. Sudhanshu S. Choudhari, learned counsel appearing on behalf of A-1, A-2 and A-3, assailed the judgment of the High Court *inter alia* contending:

G (i) that there was no direct evidence against the appellants and the Trial Court as well as the High Court have committed gross error in convicting the appellants on the basis of highly unbelievable, insufficient and unconvincing evidence led by the H prosecution;

(ii) that there is not an iota of evidence on record to prove that on the day of occurrence, Gunwant had visited the house of A-1, A-2 and A-3 nor the prosecution has proved beyond reasonable doubt that A-1 had illicit relations with the deceased Gunwant for the last 10 to 15 years; A B

(iii) that no motive whatsoever has been proved by the prosecution from the evidence on record against A-1, A-2 and A-3; and

(iv) that the findings of both the courts below that no explanation has been given by A-1, A-2 and A-3 in regard to their absence from their house on the day of incident when PW-1 and other villagers found the dead body of Gunwant in the courtyard of their house, are based upon surmises and conjectures which cannot be taken as incriminating circumstance holding A-1, A-2 and A-3 guilty of the murder of Gunwant. C D

10. Mr. Manish Pitale, learned counsel for the respondent-State, on the other hand, submitted that the reasons given by the Trial Court as well as by the High Court for recording the order of conviction of the appellants are based upon proper appreciation of evidence led by the prosecution in the case. According to him, the evidence of Namdev (PW-5) that on the day of the occurrence he saw the accused hurriedly going to the Bus Stand and thereafter they were not found in their house where the dead body of Gunwant was lying, would suggest that the appellants had left their house after having committed the murder of Gunwant. He submitted that the evidence of the prosecution witnesses is cogent, clear and satisfactory with the hypothesis of the guilt of the appellants and this Court shall be slow to interfere in the well-reasoned and well-merited judgments of the courts below. E F G

11. Before adverting to the arguments advanced by the learned counsel, we shall at the threshold point out that in the H

A present case there is no direct evidence to connect A-1, A-2 and A-3 with the commission of the offence and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the
B following tests:-

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

C (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime
D was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not
E only be consistent with the guilt of the accused but should be inconsistent with his innocence. [See ***Gambhir*** v. ***State of Maharashtra*** (1982) 2 SCC 351 : (AIR 1982 SC 1157)]

F See also ***Rama Nand*** v. ***State of Himachal Pradesh*** (1981) 1 SCC 511 : (AIR 1981 SC 738), ***Prem Thakur v. State of Punjab,*** (1982) 3 SCC 462 : (AIR 1983 SC 61), ***Earabhadrappa v. State of Karnataka,*** (1983) 2 SCC 330 : (AIR 1983 SC
G 446), ***Gian Singh v. State of Punjab,*** 1986 Suppl. SCC 676 : (AIR 1987 SC 1921), ***Balvinder Singh v. State of Punjab*** (1987) 1 SCC 1 : (AIR 1987 SC 350).

12. As far back as in 1952 in ***Hanumant Govind***
H ***Nargundkar v. State of M.P.*** [AIR 1952 SC 3443], it was

observed thus: A

> "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 B 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 C 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."

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13. A reference may be made to a later decision in ***Sharad Birdhichand Sarda v. State of Maharashtra*** (1984) 4 SCC 116 : (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false E defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are (SCC pp. 185, para 153) :

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(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(ii) the facts so established should be consistent only G with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature H

A and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as
B not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

14. We may also make a reference to a decision of this
C Court in ***C. Chenga Reddy v. State of A.P.*** (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp.206-207, para 21)

"21. In a case based on circumstantial evidence, the settled
D law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved
E circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

15. In ***Sashi Jena & Ors***. v. ***Khadal Swain & Anr***. [(2004) 4 SCC 236], this Court again reiterated the well-settled principle
F of law on circumstantial evidence.

16. Bearing the above principles of law enunciated by this Court, we have scrutinized scrupulously and examined carefully the circumstances appearing in this case against A-1, A-2 and A-3.

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Circumstance No. I

17. So far as the first circumstance is concerned, the prosecution has adduced the evidence of PW-1, brother and PW-4, wife respectively of the deceased. Both these witnesses
H have made a bald and sweeping statement that A-1 had illicit

relations with the deceased for the last about 10 to 15 years before the day of the incident. PW-5, a co-villager of the deceased, stated that he heard some village people talking about the illicit relations of the deceased with A-1. The evidence of PW-5 is hearsay version and it cannot be accepted without corroboration from the person who told this fact to PW-5. PW-1, brother, and PW-4, wife of the deceased, have categorically stated that the deceased was maternal uncle of A-1 and he occasionally used to visit the house of A-1, A-2 and A-3. It has come in the evidence of PW-1 that the deceased was living in his house with his wife (PW-4) along with one son aged about 20 to 22 years and two daughters, out of whom one is aged about 30 years and the second is about 14 to 15 years respectively. It is his evidence that A-5 (acquitted accused), daughter of A-1 and A-2, was married to A-4 (acquitted accused) about 5 to 7 years prior to the day of the incident. A-3 is also a major son of A-1 and A-2. The testimony of these witnesses in regard to the illicit relations of A-1 with the deceased for the last many years is wholly unbelievable and unconvincing in view of the fact that A-1 has been living with her husband (A-2), her major son (A-3) and daughter (A-5) (acquitted) in the same village in which PW-1, brother of the deceased, his parents and PW-4 (wife) were residing along with her son and two daughters. Had there been any such illicit relations, the entire village people would have come to know about this fact and the parents of the deceased would have never tolerated him to do so, more so when it has come in the evidence of these witnesses that the deceased was maternal uncle of A-1. The prosecution has not examined the parents of the deceased and some other village people in support of this circumstance. The prosecution has also not led any evidence to establish that on the day of occurrence the deceased had visited the house of A-1, A-2 and A-3. This circumstance cannot be said to be of a conclusive nature and tendency to prove that A-1, A-2 and A-3 had murdered Gunwant on the day of occurrence because he allegedly had illicit relations with A-1 for the past over many years. In view of this fact, it is not possible to place implicit reliance upon the

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A evidence of PW-1 and PW-4, the selective and interrogated witnesses. PW-5, PW-6 and PW-7 are residents of the same village to which A-1, A-2 and A-3 and the deceased do belong, but they have not uttered a word in regard to factum of the illicit relations of the deceased with A-1. PW-4 has deposed that the B dead body of her husband was lying in the '*Wada*', whereas PW-1, PW-4, PW-5, PW-6, PW-7 and PW-8 stated that the dead body was placed in the open place outside the house of the appellants.

Circumstance No. II

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18. In support of the second circumstance, the prosecution has brought on record the evidence of PW-3, who is one of the *Panchas* of Spot *Panchnama* and Inquest *Panchnama*. The other witnesses, who saw the dead body of the deceased in the courtyard, are PW-1, PW-4, PW-5, PW-6, PW-7 and PW-D 8. The evidence of all these witnesses would suggest that when they went on the spot of incident, the doors of the house of A-1, A-2 and A-3 were found left open. It has come in the evidence of PW-1 that there is a public way on the southern side of the house of A-1, A-2 and A-3 and there is one *Wada* by the northern E side of their house and the owner of the said *Wada* is Ram Sawakar. In cross-examination, he stated that there is one open space in between the house of the appellants and *Wada* of Ram Sawakar and the dead body of his brother-Gunwant was lying in open space near the *Wada*. He also stated that there are F some *Kirana* Shops in the eastern side of the open space of the house of A-1, A-2 and A-3. This being the position, it is not safe to connect A-1, A-2 and A-3 with the commission of the death of Gunwant merely because the dead body of the deceased was found in an open space in front of their house, G which is a public road.

Circumstances Nos. III and IV

19. In support of the third and fourth circumstances, the prosecution has led the evidence of PW-1 and Namdev (PW-H 5). It is the version of PW-1 that in the evening on 14.08.1993,

he along with Police Patil and other villagers went in search of his brother-Gunwant in the village and they found the dead body of Gunwant in front of the house of A-1, A-2 and A-3 in an open place with multiple injuries on his body. They found that A-1, A-2 and A-3 were not present in their house and the doors of their house were left open. PW-5, who at the relevant time was serving at the flour mill situated near the Bus Stand, stated that at about 6.00 p.m. on the day of incident when he came out of the flour mill and was going to toilet, he saw A-1, A-2, A-3 and A-5 going hurriedly towards the Bus Stand. On the basis of this evidence, the accused persons are suspected to be the authors of the crime who, according to the prosecution version, had left their house after committing the murder of Gunwant. We are afraid to hold A-1, A-2 and A-3 guilty of the murder of Gunwant and throwing his dead body in front of their house in the open place and then hurriedly left their house open in order to escape their arrest and final punishment in relation to the commission of heinous offence of murder. PW-5 in his deposition stated that PW-1, brother of the deceased, came to him on the day of occurrence at about 6.00 p.m. and enquired from him about the whereabouts of his brother-Gunwant to which he replied that he did not see Gunwant on the day of occurrence. This witness also stated that after some time PW-1 again came to the flour mill and enquired second time from him whether he had seen Gunwant to which he replied that he did not meet Gunwant on that day, but he disclosed to PW-1 that he had seen A-1, A-2, A-3 and A-5 going hurriedly towards the nearby bus stand. On examination of the evidence of this witness, we have noticed that he has named A-5, who was also accompanying A-1, A-2 and A-3 when they were going to the bus stand on the day of occurrence. The testimony of this witness appears to be wholly inconsistent and unbelievable to hold that he, in fact, had seen the appellants and A-5 going to the bus stand in the evening of 14.08.1993. If he had seen the appellants along with A-5 going to bus stand, he could have disclosed this fact to PW-1 at the earliest occasion at about 6.00 p.m. when he, for the first time, was asked by PW-1 in regard to the whereabouts of his brother-

A Gunwant. It has come on record that there were many other employees present in the Mill when PW-1 met PW-5 on both occasions in the evening of 14.08.1993. If the version of this witness has been discarded and disbelieved by the Trial Court in regard to A-5 having accompanied the appellants when they B were stated to be going to bus stand in the evening, the same set of reasoning will apply to A-1, A-2 and A-3 and, therefore, the testimony of this witness is not free from doubt and he does not appear to be a truthful witness to connect A-1, A-2 and A-3 with the commission of the crime. Thus, these circumstances C too have not been proved by the prosecution beyond reasonable doubt against the appellants.

Circumstance No. V

20. In support of the fifth circumstance, the prosecution D has examined Dr. Hanumant, who performed *post mortem* on the dead body of the deceased-Gunwant on 15.08.1993. Doctor noticed as many as 13 injuries on the body of the deceased as described in the *post mortem* report (Ext. 41). According to the opinion of the Doctor, the cause of death was because of shock due to cardio respiratory failure caused by injury to brain and E brain hemorrhage. The Chemical Analyser's report would reveal that *ethyl* alcohol was found in the viscera contents of the deceased. We may point out that the Investigating Officer has not cared to collect the finger prints appeared on the stones and axe, the alleged weapons of offence, at the time of seizure F of the articles nor he had taken the finger prints of the appellants for comparison with the finger prints, if any, detected on the alleged weapons of offence. The articles collected by the Investigating Officer from the spot were found lying in the open place which was accessible to all and sundry. The prosecution G has not led any evidence to prove that axe, which was the alleged weapon of offence, found on spot in the open place belonged to A-1, A-2 and A-3. Thus, the prosecution has not established beyond reasonable doubt that A-1, A-2 and A-3 had used the recovered weapons of offence in the commission of H the crime.

Circumstances Nos. VI and VII

21. In support of the sixth and seventh circumstances, the prosecution has relied upon the evidence of PW-9, Ram Woglaji, a *panch* witness of seizure *panchanama* of the clothes. In his presence the Police recorded the statement of A-1 in Police Station on 21.08.1993 disclosing the concealment of the clothes of the accused persons in her house. It is the evidence of this witness that A-1, besides handing over one *saree* and blouse, she also produced one *dhoti* and one *baniyan* of A-2 (her husband), one *saree* and one blouse of her daughter (A-5), one *lungi* and one *sando baniyan* of A-3 (son) and one pant and one *bushirt* of A-4 (her son-in-law). The evidence of this witness has to be discarded and straightaway rejected from consideration simply on the ground that he is not an independent witness, but a stock witness of the Police. In his cross-examination, he admitted that there are about 2 to 4 criminal cases pending against him. He stated that there was no door to the *Madi* from where the clothes were recovered at the instance of A-1. The Trial Court has disbelieved the evidence of this witness to the extent of the recovery of the clothes of A-4 and A-5 (acquitted) from the open *Madi*. The Chemical Analyser's report (Ext.72) reveals that human blood of Group 'B' was detected on the clothes, which were seized by the Police, allegedly belonging to the appellants. The blood group on those clothes did not tally with the blood of Group 'O', which was found on the clothes of the deceased and on the sample of soil, axe, stones, handles. etc which were taken from the spot by the Investigating Officer. The Investigating Officer has categorically stated that when he along with A-1 and *panch* witnesses had gone in search of the clothes of the appellants, the lock to the door of the house of the appellants was kept with Police Patil which was opened by them later on. In this view of the matter, the prosecution has not proved that the clothes, which were allegedly seized by the Police at the instance of A-1 and lying in the open place, were stained with blood group 'O' of the deceased found on deceased's clothes and on the articles which

A were seized by the Investigating Officer from the place of occurrence. These circumstances are not proved by the prosecution by lending cogent, satisfactory and convincing evidence to hold A-1, A-2 and A-3 guilty of the offence.

B 22. In view of the foregoing discussions, we are of the view that the prosecution has failed to complete the chain of circumstances holding A-1, A-2 and A-3 guilty of the crime beyond reasonable doubt and the High Court was not justified in upholding the conviction of A-1, A-2 and A-3 on surmises and hypothesis.

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23. In the result, the appeal is allowed. The conviction and sentence of A-1, A-2 and A-3 is set aside and they are acquitted of the charges framed against them. Shantabai (A-1), Sajan (A-2) and Govind (A-3), who are in custody, are directed to be D released forthwith, if not required in any other case.

S.K.S. Appeal allowed.