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KIRITI PAL

v.

STATE OF WEST BENGAL

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(Criminal Appeal No. 50 of 2014)

APRIL 16, 2015

[T.S. THAKUR AND R. BANUMATHI, JJ.]

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Penal Code, 1860: ss.302/120B – Conviction based on circumstantial evidence – A-1 became acquainted with the victim-deceased, a widow and developed intimacy with her – On fateful day, deceased went out with A-1 to attend a function at a school and next day she was found dead – Trial court convicted A-1 to A-3 u/ss.302/120-B/376(2)(g) and passed death sentence and convicted A-4 u/s.120B and sentenced him to life imprisonment – High Court upheld conviction u/s.302 and set aside the conviction u/s.376(2)(g) and modified death sentence to life imprisonment – On appeal, Held: The time when the deceased was with A-1 and was found dead was so proximate which pointed to the guilt of A-1 – A-1 failed to explain the circumstances in which he parted the company of the deceased which was strong militating circumstance against A-1 – The subsequent conduct of A-1 threatening A-4 and PW-7 was also a relevant circumstance – The recovery of crime weapon at the instance of A-1 was yet another incriminating circumstance in the chain which led to the conclusion pointing to the guilt of A-1 – As regards A-2 and A-3, there was no evidence to prove as to how A-2 and A-3 had gone to the place of occurrence and what was their subsequent conduct – Apart from the extract of the call records, no other evidence was

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*adduced by the prosecution to establish the conspiracy – A
 No evidence was adduced by the prosecution to
 substantiate the recovery of objects and the seizure list for
 implicating A-2 and A-3 – Likewise, apart from telephone
 calls, no other evidence was adduced by prosecution to
 bring home guilt of A-4 – Conviction of A-1 is upheld while B
 A-2 to A-4 are acquitted.*

**Dismissing the appeal of first appellant and allowing
 the appeals of appellant 2 to 4, the Court**

**HELD: 1.1 From the evidence of PWs 6, 7 and 10, C
 prosecution established that the victim-deceased was
 last seen alive in the company of A-1 on the fateful
 evening and that at about 10.00/10.30 p.m., A-1 came
 alone. The theory of “last seen alive” comes into play D
 when the time gap between the way the accused and
 the deceased were last seen together and the deceased
 was found dead was so small, the possibility of any
 other person committing the murder becomes
 impossible. On the next day morning, body of deceased E
 was found in jungle an isolated place 25 k.m. away from
 her residence. The time when the deceased left with A-
 1 and the time she was found dead was so proximate
 which pointed to the guilt of A-1. Having regard to the F
 time gap being small, it is for A-1 to explain the
 circumstances how and where and in what manner he
 parted company with the deceased. A-1 having failed to
 discharge the onus under Section 106 of the Evidence G
 Act and offer any explanation as to how, as to when and
 how and in what manner he parted the company of the
 deceased, is a strong militating circumstance against A-
 1 It came out from the testimony of PW6 that on the
 fateful evening, the deceased left her home stating to
 PW6 that she is going to Rajnagar to attend the function H**

A of the school. The fact that there was no function
scheduled to be held at Rajnagar High School was yet
another incriminating circumstance against A-1. The
subsequent conduct of A-1 threatening A-4 and PW7
was a relevant circumstance as such conduct of
B accused indicated his nexus with the offence. The
recovery of crime weapon at the instance of A-1 was yet
another incriminating circumstance in the chain which
led to the conclusion pointing to the guilt of A-1. [Paras
C 14 to 18] [739-E-H; 740-B, 741-G-H, 742-C, 743-B]

1.2. It is true that motive is an important factor in
cases where the conviction is based on circumstantial
evidence but that does not mean in all cases of
circumstantial evidence if prosecution is unable to prove
D the motive satisfactorily, the prosecution must fail. In
this case, of course, prosecution has not adduced
evidence as to what was the motive for committing
murder of the deceased. Mere fact that the prosecution
has failed to translate the mental disposition of the
E accused into evidence, that does not mean that no
such mental condition existed in the mind of the
accused. The circumstances relied upon by the
prosecution against A-1 were well established by the
F prosecution. Upon appreciation of evidence, the courts
below rightly held that the incriminating circumstances
against A-1 are firmly established and form a complete
chain pointing to the guilt of the accused and were
consistent with the hypothesis of the guilt of the first
G appellant. There is no substantial ground to interfere
with the conviction of A-1 under Section 302 IPC. [Paras
21, 22] [743-G-H; 744-A-B, G-H; 745-A]

Vivek Kalra vs. State of Rajasthan (2014) 12 SCC 439:
H 2013 (1) SCR 1070 – relied on.

2.1 There was no evidence to prove as to how A-2 and A-3 had gone to the place of occurrence and what was their subsequent conduct. Their presence near the scene of occurrence could have been established by the prosecution either by examining some witnesses near and around the place of occurrence or by proving the location of the calls so as to establish the proximity of the accused with the scene of occurrence. Apart from the extract of the call records, no other evidence was adduced by the prosecution to establish the conspiracy. Apart from telephonic conversation, prosecution also relied upon recoveries made pursuant to the confessional statement of A-2 and A-3. Pursuant to the statement of A-2, certain recoveries were made which were sought to be proved by examination of PW17. PW17 was then employed in the hotel which was owned by the deceased. In his evidence PW17 stated that in January 2009, two or three gentlemen came to his hotel and took his signature and that he did not know why his signatures were being taken. Though PW17 identified his signatures in the seizure list, evidence of PW17 no way established recoveries being made at the instance of A-2 and A-3. Evidence of PW17 is far from convincing and is not of much assistance to the prosecution as he has not clearly spoken about the recoveries and the seizure list. The gold ring and silver made chain recovered were also not shown to the other witnesses for being identified as that of the deceased. No other evidence was adduced by the prosecution to substantiate the recovery of objects and the seizure list. [Paras 23, 25 and 26] [746-E-H; 747-B-E]

2.2 So far as the complicity of A-4, the prosecution mainly relied upon the call record and his judicial confession recorded by Magistrate. Prosecution relied

A upon the recovery a notebook seized from the possession of A-4 where she has written A-1's phone number clandestinely coded as 'Dadu'. Ext. 30 call records of A-1 phone also revealed that there were number of calls from A-1 to A-4. Like in the case of A-2
B and A-3 apart from telephone calls, no other evidence was adduced by the prosecution to bring home the guilt of A-4. Insofar as the judicial confessional statement recorded under Section 164 Cr.P.C., it is not an inculpatory statement; but it is only to the effect of
C showing the subsequent conduct of A-1 in threatening A-4 not to disclose anything to the police. Neither the telephone calls between A-1 and A-4 nor her confessional statement by themselves would be sufficient to establish the guilt of A-4. [Para 27] [747-F-
D H; 748-A-C]

2.3. In a case based on circumstantial evidence, the court must adopt a very conscious approach and should record conviction only if all the links in the chain
E are complete pointing to the guilt of the accused. All the links forming complete chain must be firmly established by the prosecution. Each link taken separately may just suggest suspicion but such suspicion itself may not take the place of proof and not sufficient to convict the
F accused. All the circumstances must be firmly established and must be consistent only with the hypothesis of the guilt. But that is not to say that the prosecution must meet each and every hypothesis put forward by the accused however farfetched it may be.
G As discussed earlier, the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion itself cannot take the place of proof. The evidence adduced by the prosecution against A-2 and A-3 did not form a complete chain connecting the
H accused with the crime and the conviction of the

appellants under Section 302 IPC read with Section 120B IPC cannot be sustained and deserves to be set aside. Likewise, conviction of A-4 under Section 120B cannot be sustained and is liable to be set aside. [Para 28] [748-D-G] A

State of U.P. vs. Satish (2005) 3 SCC 114: 2005 (2) SCR 1132; State of Rajasthan vs. Kashi Ram (2006) 12 SCC 254: 2006 (8) Suppl. SCR 501 - relied on. B

Geejaganda Somaiah v. State of Karnataka (2007) 9 SCC 315: 2007 (3) SCR 899; Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka (2007) 12 SCC 288: 2007 (7) SCR 616; Gagan Kanojia And Anr. v. State of Punjab (2006) 13 SCC 516; Mohd. Mannan @ Abdul Mannan vs. State of Bihar (2011) 5 SCC 317 : 2011 (5) SCR 518; Inspector of Police, Tamil Nadu v. John David (2011) 5 SCC 509: 2011 (7) SCR 354 – referred to. C
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Case law reference

2007 (3) SCR 899	referred to.	Para 7	E
2007 (7) SCR 616	referred to.	Para 7	
(2006) 13 SCC 516	referred to.	Para 7	
2011 (5) SCR 518	referred to.	Para 7	F
2011 (7) SCR 354	referred to.	Para 7	
2005 (2) SCR 1132	relied on.	Para 15	
2006 (8) Suppl. SCR 501	relied on.	Para 21	G
2013 (1) SCR 1070	relied on.	Para 21	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 50 of 2014 etc. H

A From the Judgment and Order dated 20.06.2012 of the High Court at Calcutta in C. R. A. No. 471 of 2011.

WITH

B CrI. A. Nos. 1725 of 2014 and 1841 of 2012.

E. R. Sumathy (A.C.), Sunil Kumar Jain, Parmatma Jain, Kaushik Chaudhary, Pawanshree Agrawal for the Appellant.

C Chanchal Kumar Ganguli, Kabir Shankar Bose, Narmada, Saakaar Sardana, Anip Sachthey for the Respondent.

The Judgment of the Court was delivered by

D **R. BANUMATHI, J.** 1. These appeals by way of special leave arise out of the judgment dated 20.6.2012 passed by the High Court of Calcutta in Death Reference No. 3/2011 and Criminal Appeals No.471/2011 and 484/2011 confirming the conviction under Section 302/120 B IPC and modifying the death sentence as that of life imprisonment and further confirming the conviction and sentence imposed on the appellants-accused under Section 25(i)(a) (b) of the Arms Act.

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H 2. Briefly stated, case of the prosecution is that deceased Anjali Goswami was married to one Karuna Sindhu Goswami. Her husband used to run a line hotel at Mohd. Bazar and he died in a road accident in the year 2000. Her daughter committed suicide in the year 2006 and son also died in a road accident in the year 2008. Anjali started looking after the business of line hotel of her husband but subsequently leased out the same to PW14–Bhagyadhar Dhibar and started a beauty parlour and a cloth shop at Mohd. Bazar which she subsequently shifted to Suri in a rented accommodation of PW10–Manash Chakraborty. Fourth appellant–accused Durga Sutradhar was engaged by Anjali

to run her beauty parlour. Anjali purchased a house at Nutanpally, Suri and started residing there. While so residing, first accused Kiriti Pal became acquainted with Anajli and developed friendship and intimacy and frequently used to visit Anjali's residence.

3. On the fateful day of 11.11.2008, deceased-Anjali saying that she has to attend a function at Rajnagar went out with first accused on his motor cycle and on the following day i.e. 12.11.2008, she was found dead. On the basis of complaint lodged by PW1-Swapan Mondal on 12.11.2008, around 9.45 a.m. a case was registered at Sadaipur P.S. Case No.74/2008 under Section 302 IPC on the death of unknown female lying in a jungle locally called as Babuibona Jungle 25 kms away from Anjali's house. Her neck was tied with one end of saree she was wearing and the other end of the saree was tied with tree (Sonajahuri) suggesting that the death was homicide. PW37- Santosh Kumar Ghosh, Sub Inspector of Police, who registered the F.I.R. had taken up the initial investigation. PW37 inspected the spot and arranged for photographs and made seizure and recovered material articles from the spot where the dead body was lying. Dead body was identified as that of Anjali Goswami by PW8-Arunasish Goswami, nephew of the deceased. PW37 conducted inquest and sent the dead body for post-mortem examination. PW29 Dr. Debasis Sarkar conducted autopsy on the body of Anjali and found lacerated wounds over parietal area and left frontal area and other injuries on the body of the deceased and issued ext.27 post-mortem certificate opining that the injuries were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. PW29 also opined that injury found in the labia minora could be caused by forcible sexual intercourse on a woman.

4. PW38 Ardhendu Sekhar Pahari, Inspector CID taken

A up the matter and conducted further investigation. First accused Kiriti Pal was arrested on 15.1.2009 and based on his confessional statement, he seized Hero Honda motor cycle black colour bearing No. WB-54D/8148 and other objects. Based on his statement, A-4 Durga Sutradhar was
B also arrested on 15.1.2009. Based on his confessional statement, second accused Siddique Mia and third accused Mustaque Mia were arrested on 16.1.2009. Pursuant to the statement of Siddique Mia PW38 seized one TVS Fiero red colour motor cycle bearing No. WB-54B/8245 with its key and
C mobile nokia handset marked as seizure list Ext/17/3. Pursuant to statement of A-2, A3 Mustaque Mia led to the recovery of one nokia mobile handset, one gold finger ring with inscription of letters 'Anjali', one silver made chain with one amethyst and red coral fitted with it were seized under
D Ext.18/3. During the course of investigation, PW38 collected the call details of the accused and also the phone of Saraswati Pal wife of Kiriti Pal-first accused. Investigation revealed that the murder was a result of conspiracy between all the four
E accused. After completion of investigation, charge sheet was filed against three accused, A1 to A3 under Section 302/120B/34/376(2)(g) IPC and Sections 25, 27, 35 of the Arms Act. Fourth accused Durga Sutradhar was charged under Section 120B read with Section 302 IPC.

F 5. The accused were committed to the sessions court where the charges were framed against the accused and the appellants-accused pleaded not guilty. To bring home the guilt of the accused, the prosecution has examined 38 witnesses and exhibited number of documents and material objects.
G Upon appreciation of evidence, the learned Sessions Court vide its judgment dated 26.7.2011 and 29.7.2011 convicted the appellants A1 to A3 for offences under Section 302 IPC and sentenced them to death. Appellants A1 to A3 were also
H convicted for the offence under Section 376(2)(g) IPC and

each of them were sentenced to undergo life imprisonment with fine of Rs.5,000/- each with default clause. For conviction under Section 120B-criminal conspiracy to commit the murder, all the appellants-accused were sentenced to imprisonment for life with fine of Rs.5,000/-each with default clause. For the conviction under Section 25(1)(a)(b) of the Arms Act, appellants 1 to 3 were sentenced to undergo imprisonment for three years and to pay a fine of Rs.5,000/- each with default clause. A
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6. For confirmation of death sentence imposed on the appellants 1 to 3, State preferred Death Reference No.3/2011 before the Calcutta High Court. Assailing the correctness of their conviction and sentence, accused 1 to 3 preferred criminal appeal 471/2011 and fourth accused preferred criminal appeal 484/2011. The High Court partly allowed the appeal by setting aside the conviction under Section 376(2)(g) IPC and for the conviction under Section 302 IPC modified the sentence of death to life imprisonment. High Court confirmed the conviction of fourth accused Durga Sutradhar under Section 120B IPC and sentence of life imprisonment imposed on her. In these appeals, the appellants-accused 1 to 4 assail the correctness of the impugned judgment of the High Court. C
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Involvement of A-1 and his conviction: F

7. As against Kiriti Pal (A-1) prosecution case is that he hatched criminal conspiracy along with Siddique Mia (A-2), Mustaque Mia (A-3) and Durga Sutradhar (A-4) to commit the murder of deceased-Anjali Goswami. Prosecution case is based on circumstantial evidence. It is well-settled that in cases where the evidence is purely circumstantial in nature, the circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and such circumstances must be consistent and must G
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A form a complete chain unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution. Referring to several earlier decisions of this Court in *Geejaganda Somaiah vs. State of Karnataka*, (2007) 9 SCC 315 para 15 it was held as follows:-

B “15. Sir Alfred Wills in his admirable book *Wills’ Circumstantial Evidence* (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.”

F Same principle was reiterated in *Swamy Shraddananda @ Murali Manohar Mishra vs. State of Karnataka* (2007) 12 SCC 288; *Gagan Kanojia And Anr. vs. State of Punjab*, (2006) 13 SCC 516, *Mohd. Mannan @ Abdul Mannan vs. State of Bihar* (2011) 5 SCC 317; *Inspector of Police, Tamil Nadu vs. John David*, (2011) 5 SCC 509 and other cases.

G 8. As against Kiriti Pal, prosecution relied upon the following incriminating circumstances:

- (i) that Kiriti Pal had intimacy with Anjali Goswami;
- H (ii) deceased Anjali Goswami was last seen alive in the

company of Kiriti Pal (A-1);

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(iii) there was no satisfactory explanation by the accused as to the death of Anjali Goswami;

(iv) subsequent conduct of Kiriti Pal (A-1) and

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(v) recovery at the instance of first appellant.

It is to be seen that whether the above circumstances from which conclusion of guilt is sought to be drawn are fully established and whether the circumstances form a complete chain pointing to the guilt of the accused and whether the circumstances are consistent with the hypothesis of guilt of the accused.

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9. After death of her husband Karuna Sindhu Goswami, Anjali was running her husband's line hotel in Mohd. Bazar and later she leased out the same to PW 14- Bhagyadhar Dhibar. After death of her daughter and son, Anjali shifted her residence to Suri and started running a beauty parlour in a rented premises owned by PW 10- Manash Chakraborty. It is brought in evidence that Anjali was looking beautiful and was interested in acting and she was mixing up with people for getting chances in the film. Anjali purchased a house at Nutanpally, Suri and was residing in the first floor. Ground floor of her house was let out to couple PWs 6 and 7 Anju Majhi and Biren Majhi.

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10. A-1 Kiriti Pal himself a married man posing himself to be a teacher in a school and bachelor developed friendship and intimacy with Anjali. Deceased-Anjali trusted A-1 Kiriti Pal and allowed him to pass nights at her residence at Nutanpally, Suri. In her cross-examination, PW6 has stated that she saw first accused Kiriti Pal in the room of Anjali several times. During his questioning under Section 313 Cr.P.C., A-1 Kiriti Pal had also admitted his friendship and close intimacy with

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A Anjali. PW3-Tarun Mukherjee, brother-in-law of Anjali and Anjali's tenant PWs 6 and 7 (Anju Majhi and Biren Majhi) had spoken about the intimacy between Anjali and the first accused Kiriti Pal. It is pertinent to note that PW11-Asit Dey stated that there was no teacher named Kiriti Pal in their school at any time.

11. Smt. Chameli Banerjee (PW-9) who is the sister of Anjali had stated that few days prior to the date of incident, Anjali expressed her desire to stay at Katwa, residence of PW-9. As per the evidence of PW 3, on 7.11.2008 Anjali had dropped her mother Pratima Chatterjee at Shibloon for going to her maternal uncle's house and thereafter she had gone to Katwa to her sister's house. As per the evidence of PW9 on the evening of 7.11.2008 Anjali received a telephonic call after which Anjali became restless. On being asked by PW 9, Anjali replied that she has to attend a cultural programme at Rajnagar High School and that is why she had leave from the residence of PW9 at dawn. PW3-Tarun Mukherjee had also corroborated the said aspect of testimony of PW9.

12. On the fateful evening of 11.11.2008, Anjali came in the motor cycle of A-1 Kiriti Pal from her beauty parlour. She went to the room of her house and called PW6 Anju Majhi to help her "wearing saree by holding its kuchi" and thereafter wearing some gold ornaments, Anjali went with A-1 Kiriti Pal on his motor cycle. PW6 Anju Majhi tenant in the ground floor had spoken about deceased-Anjali wearing saree, leaving the house with A-1 in his motor cycle. In her evidence, PW6 stated that she asked Anjali where she is going and that Anjali told her that she is going to Rajnagar for attending the function of Prosenjit and Chiranjib. When PW6 asked Anjali about the time of her return, Anjali replied saying that she will come back at night around 9.00-9.30 p.m. PW6 stated that Anjali did not come back till 10.00-10.30 p.m. On hearing the horn of motor

cycle, she opened the main gate and she saw only A-1 Kiriti Pal. PW6 further stated that first appellant Kiriti Pal asked her as to whether key of Anjali's room is with PW6 and PW6 answered in negative. PW 6 asked first appellant Kiriti Pal about Anjali and he told her that "*Didi is making a gossip with one person. He will take her later*" and by saying so first appellant Kiriti Pal left the place. A
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13. Anjali was last seen in the company of first appellant is also spoken by PW10- Manas Chakraborty who deposed that on 11.11.2008 at about 5.35 p.m. when he was entering into his house from office, Anjali was found sitting on the verandah of the first floor and PW 10 asked her to give rent. After going inside his house, PW10 while taking tea on the verandah, Anjali was getting down from the beauty parlour and again PW10-Manash Chakraborty asked Anjali for rent and Anjali showing her hand stated that 'she was coming'. PW10 stated that he saw Anjali going as the pillion rider in the motor cycle and that the motor cyclist was a man aged 50 years who was of medium physique, scanty hair on his head. C
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14. From the evidence of PWs 6, 7 and 10, prosecution has thus established that Anjali was last seen alive in the company of first appellant Kiriti Pal on the evening of 11.11.2008 and that at about 10.00/10.30 p.m., first appellant Kiriti Pal came alone. The theory of "*last seen alive*" comes into play when the time gap between the way the accused and the deceased were last seen together and the deceased was found dead was so small, the possibility of any other person committing the murder becomes impossible. On the next day morning at about 9.30 a.m., body of deceased Anjali was found in Babuibona jungle an isolated place which is 25 k.m. away from her residence. The place where the dead body was found was connected with Rajnagar - Suri Road. The time when Anjali left with first appellant-Kiriti Pal and the time she F
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A was found dead is so proximate which, in our view, points to the guilt of the first appellant.

15. Having regard to the time gap being small, it is for the first appellant to explain the circumstances how and where and in what manner he parted company with Anjali. Thus, on the principle that the person who is last found in the company of another is dead or missing, the person with whom he was last found alive has to explain the circumstances in which he parted the company as pointed out by the trial court and the High Court, first appellant has failed to discharge the onus and failed to offer any explanation as to how, as to when and how and in what manner he parted the company of Anjali, is a strong militating circumstance against the first appellant-Kiriti Pal. There is force in the submission of the learned counsel for the State that the first appellant-Kiriti Pal failed to offer any explanation, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. In the case of *State of U.P. vs. Satish* (2005) 3 SCC 114, this Court had stated the last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. In *State of Rajasthan vs. Kashi Ram*, (2006) 12 SCC 254, in paragraph 23, this Court has held as under:-

G "It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an

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explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in *Naina Mohd., Re.* (AIR 1960 Mad 218.)"

Taking into consideration the case of prosecution in its entirety and keeping in mind the circumstances precedes and follow the point of having so last seen, "*the last seen theory*", in our view, is a strong incriminating circumstance in the chain of circumstances that would point to the guilt of the first appellant with some certainty.

16. It has come out from the testimony of PW6 that on the fateful evening of 11.11.2008, Anjali left her home stating to PW6 that she is going to Rajnagar to attend the function of Prosenjit and Chiranjib. PW11-Asit Dey is the principle of Rajnagar High School who has deposed that no function was scheduled to be held on 11.11.2008 in the school ground either of Prosenjit or Chiranjib or of any other film artist. The fact that there was no function scheduled to be held at

A Rajnagar High School is yet another incriminating circumstance against the first accused.

17. PW 38 Inspector Ardhendu Sekhar Pahari of CID has stated that first appellant Kiriti Pal called the fourth appellant
B Durga Sutradhar on 26.12.2008 at 07.47:50 hrs. from his mobile 9232589186 and threatened her not to disclose the facts regarding murder of Anjali to CID police. PW7 Biren Majhi had also spoken about such threat from first appellant threatening PW7 not to disclose anything to police and asking
C PW7 to vacate the premises. The subsequent conduct of first appellant threatening 4th appellant-accused Durga Sutradhar and PW7-Biren Majhi is a relevant circumstance as such conduct of accused indicates his nexus with the offence.

D 18. After the arrest of first three accused, and on their statement one improvised country made single shotter pipe gun measuring about 10" (approx) having barrel, trigger, firing pin and iron butt was recovered. In the seizure Mahazar Exs 23/4 and 23/2, it is stated that "From the butt it seems that
E the wooden portion has been detached". From between the rocks on the bank of Chandra-Bhaga river just beneath the Chandra Bhaga river bridge near Saluka village under Rajnagar Police Station, Distt. Birbhum were recovered. As per seizure list Ext.25/2, on 28.1.2009 PW38 recovered one
F blood stained part of wooden butt which seems to be a part of wooden butt of a shotgun, measuring about 8 cm (approx) with a screw hole in the middle; one blood stained part of a wooden butt which seems to be a part of a wooden butt of a
G shotgun measuring 8 cm (approx) fixed with a iron screw in the middle measuring about 2.5 cm (approx.) from Babuibona jungle under Karamkal Mouza. PW22 Khalil and PW38 Ardhendu Sekhar Pahari, investigating officer have spoken about the recovery. PW29 Dr. D. Sarkar who conducted the
H post-mortem examination over the dead body of Anjali

Goswami stated that injury No.6 could have been caused by a hard blunt substance and it could also be caused by striking with the butt of a short firearm. The recovery at the instance of first appellant-accused is yet another incriminating circumstance in the chain which leads to the conclusion pointing to the guilt of the first appellant.

19. Wooden butts recovered on 28.1.2009 were sent to the Forensic Science Laboratory. On the seized wooden butts, blood was detected; but the same was insufficient for serological test (Ext.56). Detection of blood on the seized wooden butts cannot be discarded on the ground that it was insufficient for serological test. There is no legal proposition, the detection of blood is unworthy of acceptance merely because it was insufficient for serological test and the case of the prosecution cannot be doubted on that score.

20. Statement of A-4 Durga Sutradhar recorded under Section 164 Cr.P.C. is yet another incriminating circumstance against A-1 Kiriti Pal. A-4 Durga Sutradhar has stated that A-1 Kiriti Pal called her over telephone and threatened her not to disclose anything to police is a strong militating circumstance against A-1 Kiriti Pal pointing to his guilt.

21. Learned counsel for the first appellant contended that no motive is attributed to the accused and merely because the first appellant had developed friendship and intimacy with Anjali Goswami, in the absence of any motive attributed, the courts below erred in convicting the first appellant. It is true that motive is an important factor in cases where the conviction is based on circumstantial evidence but that does not mean in all cases of circumstantial evidence if prosecution is unable to prove the motive satisfactorily, the prosecution must fail. In this case, of course, prosecution has not adduced evidence as to what was the motive for committing murder of Anjali. But it is a matter of common knowledge that

A murders have been committed without any pro-eminent
B motive. It is well established that the mere fact that the
prosecution has failed to translate the mental disposition of
the accused into evidence, that does not mean that no such
mental condition existed in the mind of the accused. Same
view was reiterated in *Vivek Kalra vs. State of Rajasthan*,
(2014) 12 SCC 439, it was observed thus:-

C "17...where prosecution relies on circumstantial
evidence only, motive is a relevant fact and can be taken
into consideration under Section 8 of the Indian
Evidence Act, 1872 but where the chain of other
circumstances establishes beyond reasonable doubt
that it is the accused and the accused alone who has
committed the offence, and this is one such case, the
D Court cannot hold that in the absence of motive of the
accused being established by the prosecution, the
accused cannot be held guilty of the offence. In *Ujjagar
Singh vs. State of Punjab* (2007) 13 SCC 90, this Court
observed: (SCC P.99 para 17)

E "17.....It is true that in a case relating to circumstantial
evidence motive does assume great importance but to
say that the absence of motive would dislodge the entire
prosecution story is perhaps giving this one factor an
F importance which is not due and (to use the cliché) the
motive is in the mind of the accused and can seldom
be fathomed with any degree of accuracy."

G 22. The circumstances relied upon by the prosecution
against the first appellant Kiriti Pal are well established by the
prosecution. Upon appreciation of evidence, the trial court and
the High Court rightly held that the incriminating circumstances
against the first appellant Kiriti Pal are firmly established and
form a complete chain pointing to the guilt of the accused and
H are consistent with the hypothesis of the guilt of the first

appellant. We find no substantial ground to interfere with the conviction of the first appellant Kiriti Pal under Section 302 IPC. Insofar as the charge of rape is concerned, we agree with the view of the High Court that there is no positive evidence for sustaining the conviction under Section 376(2)(g) IPC. The conviction of the first appellant Kiriti Pal under Section 25(i)(a) (b) of Arms Act and the sentence imposed on him is confirmed.

Involvement of A-2, A-3 and A-4 and their conviction.

23. For conviction of appellants A-2, A-3 and A-4, courts below relied upon two circumstances:- (i) that soon before the time of incident and after the incident all the accused were in contact with each other on the phone calls and thus had conspired in perpetrating the crime; (ii) recovery of incriminating articles from appellants 2 and 3.

24. To arrive at a conclusion that the accused-appellants have conspired together to commit the offence, courts below mainly relied upon the phone calls details. Ext.30 is the call record of mobile No.9232589186 of Kiriti Pal which shows that Kiriti Pal made 41 calls to A4 Durga Sutradhar from 7.12.2008 to 15.1.2009. Ext.31 is the call record of Siddique Mia. Ext. 31 indicates that 144 calls were made from the mobile phone of Mustaque Mia to Siddique Mia. Some of the calls were incoming calls from the mobile of Siddique Mia to Mustaque Mia. Ext.31 indicates that there was telephonic conversation between the accused Musatque Mia and accused Siddique Mia. Ext.32 shows that Kiriti Pal gave 7 calls to Anjali's mobile from 11.7.2008 to 9.11.2008.

Ext.34 shows Saraswati gave 7 calls to Siddique Mia during the period from 11.11.2008 to 14.11.2008. Documentary evidence indicates that Siddique Mia made 13 calls to Saraswati during the period from 10.11.2008 to

- A 27.11.2008. Ext.35 shows that Saraswati gave 38 calls to Durga Sutradhar during the period from 11.11.2008 to 20.11.2008. Documentary evidence also indicates that all the accused were in contact with one another over the phone. Scrutiny of call details revealed that on 11.11.2008 Saraswati gave 2 calls to Anjali. One call was at 12.55 hours and another call was at 12.58 hours and 4 calls to Siddique Mia, first call was at 9.55 hours and the last call was at 17.20 hrs. Documentary evidence further indicates that on 11.11.2008 Siddique Mia had a telephonic conversation with Mustaque Mia around 19.19 hours and Siddique Mia had also telephonic conversation with Saraswati and the first call was around 9.55 hours and the last call was at 21.42 hours. Saraswati had a telephonic conversation too with Durga Sutradhar on that date and there were six incoming and outgoing calls. The first call was around 10.57 hours and the last call was at 17.57 hours.

25. Apart from telephonic conversation, no other evidence was adduced by the prosecution to bring home that first accused hatched a conspiracy. There is no evidence to prove as to how the appellants 2 and 3 (Siddique Mia and Mustaque Mia) had gone to the place of occurrence and what was their subsequent conduct. Their presence near the scene of occurrence could have been established by the prosecution either by examining some witnesses near and around the place of occurrence or by proving the location of the calls so as to establish the proximity of the accused with the scene of occurrence. Apart from the extract of the call records, no other evidence was adduced by the prosecution to establish the conspiracy.

26. Apart from telephonic conversation, prosecution also relied upon recoveries made pursuant to the confessional statement of the appellants 2 and 3 (Siddique Mia and Mustaque Mia). Pursuant to the statement of Siddique Mia

one TVS Fiero red colour motor cycle bearing No. WB-54B/ A
8245 with its key and nokia mobile handset (phone
No.9932345230) were seized under Ext.17/3. Pursuant to the
statement of Mustaque Mia nokia mobile handset having
connection No. 9932705533, one gold finger ring in the
shape of a flower with inscription of letter 'Anjali', and silver B
made chain with one Amethyst and red coral fitted with it were
seized under Ext. 18/3. Recoveries made and seizure list
were sought to be proved by examination of PW17-Uttam
Mondal. PW17 had deposed that he knew deceased Anjali. C
PW17 was then employed in the hotel run by Bhagyadhar
Dhibar which was owned by Anjali. In his evidence PW17
stated that in January 2009, two or three gentlemen came to
his hotel and took his signature and that he did not know why
his signatures were being taken. Though PW17 identified his D
signatures in the seizure list, evidence of PW17 no way
establishes recoveries being made at the instance of the
accused 2 and 3. Evidence of PW17 is far from convincing
and is not of much assistance to the prosecution as he has
not clearly spoken about the recoveries and the seizure list. E
The gold ring and silver made chain recovered were also not
shown to the other witnesses for being identified as that of
Anjali. No other evidence was adduced by the prosecution to
substantiate the recovery of objects and the seizure list.

27. Sofar as the complicity of fourth accused-Durga F
Sutradhar, the prosecution mainly relied upon the call record
and judicial confession of Durga recorded by Judicial
Magistrate, 2nd Court, Suri, Birbhum (Ext.26). Prosecution
relied upon the recovery a notebook seized from the G
possession of appellant Durga Sutradhar where she has
written Kiriti's phone number clandestinely coded as 'Dadu'.
Ext. 30 call records of Kiriti Pal phone also revealed that there
were number of calls from Kiriti Pal to fourth appellant. Like
in the case of appellants No. 2 and 3 (Siddique Mia and H

- A Mustaque Mia) apart from telephone calls, no other evidence was adduced by the prosecution to bring home the guilt of fourth accused-Durga Sutradhar. Insofar as the judicial confessional statement recorded under Section 164 Cr.P.C., it is not an inculpatory statement; but it is only to the effect of showing the subsequent conduct of A-1 Kiriti Pal in threatening Durga Sutradhar—fourth appellant not to disclose anything to the police. In our view, neither the telephone calls between the first appellant-Kiriti Pal and Durga Sutradhar—fourth appellant nor her confessional statement by themselves would be sufficient to establish the guilt of fourth appellant.

28. In a case based on circumstantial evidence, the court must adopt a very conscious approach and should record conviction only if all the links in the chain are complete pointing to the guilt of the accused. All the links forming complete chain must be firmly established by the prosecution. Each link taken separately may just suggest suspicion but such suspicion itself may not take the place of proof and not sufficient to convict the accused. All the circumstances must be firmly established and must be consistent only with the hypothesis of the guilt. But that is not to say that the prosecution must meet each and every hypothesis put forward by the accused however farfetched it may be. As discussed earlier, the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion itself cannot take the place of proof. In our view, evidence adduced by the prosecution against appellants 2 and 3 (Siddique Mia and Mustaque Mia) do not form a complete chain connecting the accused with the crime and the conviction of the appellants under Section 302 IPC read with Section 120B IPC cannot be sustained and deserves to be set aside. Likewise, conviction of fourth appellant-Durga Sutradhar under Section 120B cannot be sustained and is liable to be set aside.

- H 29. In the result, criminal appeal No.50/2014 filed by

accused Kiriti Pal is dismissed and the conviction and sentence under Section 302 IPC and 120B IPC and under Section 25(i)(a)(b) of the Arms Act imposed on the first appellant-Kiriti Pal by the High Court is confirmed. Criminal Appeal No.1841/2012 filed by accused Siddique Mia and Mustaque Mia and criminal appeal No.1725/2014 filed by Durga Sutradhar are allowed. Appellants 2 to 4 (Siddique Mia, Mustaq Mia and Durga Sutradhar) are acquitted of all the offences and they are directed to be set at liberty forthwith if not required in any other case.

Devika Gujral

Appeals disposed of.