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GANPAT SINGH

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No. 630 of 2009)

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SEPTEMBER 19, 2017

**[N. V. RAMANA AND DR. D. Y. CHANDRACHUD, JJ.]**

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*Penal Code, 1860 – s. 302 – Dead body found in a dry well – Identified to be that of PW-4's mother – Appellant absconded immediately after the incident – Trial Court found appellant guilty entirely on basis of circumstantial evidence – High Court affirmed the conviction of the appellant – On appeal, held: There is manifest error on the part of the High Court in holding that the body of the deceased was recovered at the instance of the appellant – The appellant was arrested several months after the recovery of the body – Hence, the recovery of the body could not have been (and was not) at his instance – The mere circumstance that the appellant was last seen with the deceased is an unsafe hypothesis to found a conviction on a charge of murder in instant case – The lapse of time between the point when the appellant was last seen with deceased and the time of death is not minimal – The time of death was estimated to be between two to four weeks prior to the recovery of the body – Insofar, the testimony of son of deceased, that appellant informed him that deceased had stayed back – This coupled with the fact that the appellant had absconded after the date of the incident is a strong suspicion that the appellant was responsible for the death – However, a strong suspicion in itself is not sufficient to lead to the conclusion that the guilt of the appellant stands established beyond reasonable doubt – There are material contradictions in the case of the prosecution – The prosecution failed to establish a complete chain of circumstances and to exclude every hypothesis other than the guilt of the appellant.*

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The case of the prosecution is that a dead body was found in a dry well. The body was identified to be of PW-4's mother. Based on circumstantial evidence the Sessions Judge found the Appellant guilty u/s. 302 of the IPC and sentenced him to imprisonment for life.

The High Court did not rely upon the alleged recovery of the silver ornaments which was a material circumstance which the Sessions Judge had found to link the Appellant with the murder. Nonetheless, three circumstances weighed with the High Court in affirming the conviction of the Appellant, viz. (i) deceased was last seen in the company of the accused; (ii) the accused made false statement to the son of the deceased Rakesh (PW-4) that her mother had gone to the maternal aunt; (iii) the body of the deceased was recovered at the instance of the accused. Hence, the present appeal.

#### Allowing the appeal, the Court

**HELD: 1.1** There are no eye-witnesses to the crime. In a case which rests on circumstantial evidence, the law postulates a two-fold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt. Second, all the circumstances must be consistent only with the guilt of the accused. [Para 9] [711-F-G]

**1.2** The case of the prosecution is riddled with unexplained contradictions, PW1 and PW2 were crucial to the case of the prosecution for establishing that the deceased had visited them and that they had lent her silver ornaments ostensibly because she intended to arrange the engagement of her son PW4. Admittedly, neither PW1 nor PW2 were called upon to identify the jewellery alleged to have been recovered from the house of the Appellant. PW1 stated that the jewellery which she had lent weighed more than half a kg. PW2 deposed that the ornaments which she had lent weighed about 1.25 kgs. In the course of her cross-examination, PW1 stated that it was true that the ornaments which she had lent were commonly worn by women in the villages. PW2 also admitted that there were no identification marks on the ornaments and they were of a nature that is commonly used. PW5, the daughter of the deceased, had (as the High Court observed) no opportunity to observe the ornaments on the person of the deceased. The ornaments had no special marks of identification. PW5 materially improved upon her version during the course of the examination. On this state of the evidence, the recovery of the silver ornaments (which was an important link in

A the chain of circumstances relied upon by the Additional Sessions Judge) has been correctly disbelieved by the High Court. [Para 11] [713-A-D]

B 2. An important circumstance which weighed with the High Court was that the body of the deceased was recovered at the behest of the Appellant. There is a manifest error on the part of the High Court in arriving at this conclusion since the record would indicate that the body of the deceased was recovered several months before the arrest of the Appellant. The mere circumstance that the Appellant was last seen with the deceased is an unsafe hypothesis to found a conviction on a charge of murder in this case. The lapse of time between the point when the Appellant was last seen with the deceased and the time of death is not minimal. The time of death was estimated to be between two to four weeks prior to the recovery of the body. [Para 12] [712-E-F]

D 3. The testimony of PW4 is that when he enquired regarding whereabouts of his mother-deceased, the Appellant informed him that she had stayed back at the house of her sister. This, coupled with the fact that the Appellant had absconded after the date of the incident is a pointer to a strong suspicion that the Appellant was responsible for the death of victim. However, a strong suspicion in itself is not sufficient to lead to the conclusion that the guilt of the Appellant stands established beyond reasonable doubt. There are material contradictions in the case of the prosecution. These have been noticed in the earlier part of its judgment and are sufficient to entitle the Appellant to the benefit of doubt. The prosecution failed to establish a complete chain of circumstances and to exclude every hypothesis other than the guilt of the Appellant. [Para 13] [713-G-H; 714-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 630 of 2009.

G From the Judgment and Order dated 22.03.2007 of the High Court of Madhya Pradesh bench at Indore in Criminal Appeal No. 848 of 1998.

Shakil Ahmed Syed, Mohd. Parvez Dabas, Uzmil Jameel Husain, Advs. for the Appellant.

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Ms. Sakshi Kakkar, Gaurav Shukla, Alok Kumar Pandey (for C. A  
D. Singh), Advs. for the Respondent.

The Judgment of the Court was delivered by

**DR. D.Y. CHANDRACHUD, J.** 1. This appeal arises from a  
judgment of a Division Bench of the Madhya Pradesh High Court in its  
bench at Indore, rendered on 22 March 2007. The High Court affirmed  
the conviction of the Appellant under Section 302 of the Indian Penal  
Code ("IPC"). B

2. Shantabai was a widow. Her husband Mangilal had died about  
a decade earlier. She resided together with her son Rakesh, who was a  
minor. The prosecution alleges that the Appellant would visit her  
frequently. C

3. The case of the prosecution is that on 8 July 1996, the police  
station at Doraha received information of a dead body being found in a  
dry well. A 'missing report' had been lodged by Rakesh. Rakesh had  
alleged that the Appellant used to frequently visit the house where  
Shantabai resided and had started to live there. Rakesh informed the  
police that a few days earlier, the Appellant had come to the house and  
had left the next morning with his mother for Sihore soon thereafter. On  
the next day, when the Appellant returned alone, Rakesh enquired of the  
whereabouts of his mother. The Appellant allegedly informed him that  
she had stayed back at the home of Rakesh's maternal aunt. A First  
Information Report was registered. A post-mortem was conducted on  
the body which had been recovered from the dry well, which was identified  
to be that of Shantabai. The body was decomposed and there was a  
piece of cloth loosely tied around the neck. The period of death was  
estimated to be between two to four weeks prior to the recovery of the  
dead body. The Appellant is stated to have absconded immediately after  
the incident. He was arrested on 12 December 1997. The appellant was  
tried on the charge of murder. D  
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4. The prosecution examined fifteen eye-witnesses. Among them  
were Rakesh- PW4 and Rekha-PW5, the married daughter of the  
deceased. PW1-Kamlabai and PW2-Dhankunwarbai deposed that  
Shantabai had visited their homes with a request to lend certain silver  
ornaments to her since she intended to arrange the engagement of her  
son, PW4- Rakesh. The evidence of these two witnesses was sought to  
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A be buttressed by a recovery of silver ornaments from the house of the Appellant. PW3- Phool Singh was a witness for the prosecution in support of the seizure memo. PW4- Rakesh deposed that the Appellant had taken his mother along with him under the pretext of getting Rakesh engaged. PW4 stated that on the next day, when the Appellant returned alone, he enquired about the whereabouts of his mother when the Appellant informed him that she had stayed back with her sister. PW4 stated that he made inquiries with his maternal aunt who informed him that his mother had not visited her.

5. The Additional Sessions Judge by a judgment dated 23 June 1998 found the Appellant guilty of an offence under Section 302 of the IPC and sentenced him to imprisonment for life. The case rested entirely on circumstantial evidence. The circumstances which weighed with the trial court were that : (i) the deceased was last seen accompanying the Appellant; (ii) the deceased had taken with her the jewellery of PW1 and PW2 which was recovered from the Appellant; and (iii) the Appellant had no explanation of how the articles were found in his possession.

6. In appeal, the High Court by its judgment dated 22 March 2007, disbelieved the case of the prosecution on the recovery of the silver ornaments from the house of the Appellant. The High Court noticed that only three silver ornaments had been recovered which were identified by Rekha, PW5 who was the daughter of the deceased. Significantly, as the High Court noted, the prosecution had no explanation as to why there was no identification of the silver ornaments by PW1-Kamlabai and PW2- Dhankunwarbai who were alleged to have lent their ornaments to the deceased. The ornaments had no special marks of identification and were commonly available in the market. The High Court observed that Rekha, PW5 had no occasion to observe the ornaments since her mother had only visited briefly. PW5, in the course of her deposition, stated for the first time that one of the ornaments belonged to her but then changed her statement and stated that it belonged to her mother. The High Court noticed a clear contradiction with her statement under Section 161 of the CrPC. The recovery of the ornaments from the house of the Appellant has hence been disbelieved. The High Court also noted in the course of the judgment that Rakesh, PW4 had exaggerated what he claimed to know, in the course of his deposition. PW4 stated that the Appellant had admitted to him that he had killed Shantabai but no such statement was made under Section 161 of the CrPC.

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7. In the above background, the High Court did not rely upon the alleged recovery of the silver ornaments which was a material circumstance which the Additional Sessions Judge had found to link the Appellant with the murder of Shantabai. Nonetheless, three circumstances weighed with the High Court in affirming the conviction of the Appellant. These are summarized in the following extracts of the judgment of the High Court :

“Thus, to summarize the facts :-

- (i) The deceased was last seen in the company of the accused.
- (ii) The accused made false statement to the son of the deceased Rakesh (PW-4) that her mother had gone to the maternal aunt.
- (iii) That the body of the deceased was recovered at the instance of the accused.”

8. During the course of the hearing of the appeal, it has been submitted on behalf of the Appellant that the third circumstance noted above reveals a clear error by the High Court since the body of the deceased was recovered on 8 July 1996 whereas the Appellant was arrested on 12 December 1997. This aspect has not been disputed by learned Counsel appearing on behalf of the respondent-state. Hence, there is a manifest error on the part of the High Court in holding that the body of the deceased was recovered at the instance of the Appellant. The Appellant was arrested several months after the recovery of the body. Hence, the recovery of the body could not have been (and was not) at his instance. That essentially leaves the court only with the first two circumstances which have been relied upon by the High Court.

9. There are no eye-witnesses to the crime. In a case which rests on circumstantial evidence, the law postulates a two-fold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt. Second, all the circumstances must be consistent only with the guilt of the accused. The principle has been consistently formulated thus :

“The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing

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cumulatively should form a chain so complete that there is no  
escape from the conclusion that within all human probability the  
crime was committed by the accused and they should be incapable  
of explanation on any hypothesis other than that of the guilt of the  
accused and inconsistent with his innocence”.<sup>1</sup>

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10. Evidence that the accused was last seen in the company of  
the deceased assumes significance when the lapse of time between the  
point when the accused and the deceased were seen together and when  
the deceased is found dead is so minimal as to exclude the possibility of  
a supervening event involving the death at the hands of another. The  
settled formulation of law is as follows :

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“The last seen theory comes into play where the time gap between  
the point of time when the accused and deceased were seen last  
alive and when the deceased is found dead is so small that possibility  
of any person other than the accused being the author of crime  
becomes impossible. It would be difficult in some cases to positively  
establish that the deceased was last seen with the accused when  
there is a long gap and possibility of other persons coming in  
between exists. In the absence of any other positive evidence to  
conclude that accused and deceased were last seen together, it  
would be hazardous to come to a conclusion of guilt in those  
cases”.<sup>2</sup>

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<sup>1</sup> See *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116; *Ramreddy Rajeshkhanna Reddy v. State of Andhra Pradesh*, (2006) 10 SCC 172; *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681; *Venkatesan v. State of Tamil Nadu*, (2008) 8 SCC 456; *Sanjay Kumar Jain v. State of Delhi*, (2011) 11 SCC 733; *Madhu v. State of Kerala*, (2012) 2 SCC 399; *Munna Kumar Upadhyaya @ Munna Upadhyaya v. State of Andhra Pradesh*, (2012) 6 SCC 174; *Vivek Kalra v. State of Rajasthan*, (2014) 12 SCC 439.”

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<sup>2</sup> See *Bodh Raj @ Bodha v. State of Jammu and Kashmir*, (2002) 8 SCC 45; *Jaswant Gir v. State of Punjab* (2005) 12 SCC 438; *Tipparam Prabhakar v. State of Andhra Pradesh*, (2009) 13 SCC 534; *Rishi Pal v. State of Uttarakhand*, (2013) 12 SCC 551; *Krishnan v. State of Tamil Nadu*, (2014) 12 SCC 279; *Kiriti Pal v. State of West Bengal*, (2015) 11 SCC 178; *State of Karnataka v. Chand Basha*, (2016) 1 SCC 501; *Rambraksh v. State of Chhattisgarh*, (2016) 12 SCC 251; *Anjan Kumar Sharma v. State of Assam*, 2017 (6) SCALE 556.”

11. The case of the prosecution is riddled with unexplained contradictions, PW1-Kamlabai and PW2-Dhankunwarbai were crucial to the case of the prosecution for establishing that the deceased had visited them and that they had lent her silver ornaments ostensibly because she intended to arrange the engagement of her son Rakesh-PW4. Admittedly, neither PW1 nor PW2 were called upon to identify the jewellery alleged to have been recovered from the house of the Appellant. PW1 stated that the jewellery which she had lent weighed more than half a kg. PW2 deposed that the ornaments which she had lent weighed about 1.25 kgs. In the course of her cross-examination, PW1 stated that it was true that the ornaments which she had lent were commonly worn by women in the villages. PW2 also admitted that there were no identification marks on the ornaments and they were of a nature that is commonly used. PW5-Rekha, the daughter of the deceased, had (as the High Court observed) no opportunity to observe the ornaments on the person of the deceased. The ornaments had no special marks of identification. PW5 materially improved upon her version during the course of the examination. On this state of the evidence, the recovery of the silver ornaments (which was an important link in the chain of circumstances relied upon by the Additional Sessions Judge) has been correctly disbelieved by the High Court.

12. An important circumstance which weighed with the High Court was that the body of the deceased was recovered at the behest of the Appellant. There is a manifest error on the part of the High Court in arriving at this conclusion since the record would indicate that the body of the deceased was recovered several months before the arrest of the Appellant. The mere circumstance that the Appellant was last seen with the deceased is an unsafe hypothesis to found a conviction on a charge of murder in this case. The lapse of time between the point when the Appellant was last seen with the deceased and the time of death is not minimal. The time of death was estimated to be between two to four weeks prior to the recovery of the body.

13. We must also place in balance the testimony of PW4 that when he enquired regarding whereabouts of his mother, the Appellant informed him that she had stayed back at the house of her sister. This, coupled with the fact that the Appellant had absconded after the date of the incident is a pointer to a strong suspicion that the Appellant was responsible for the death of Shantabai. However, a strong suspicion in

- A itself is not sufficient to lead to the conclusion that the guilt of the Appellant stands established beyond reasonable doubt. There are material contradictions in the case of the prosecution. These have been noticed in the earlier part of its judgment and are sufficient in our view to entitle the Appellant to the benefit of doubt. The prosecution failed to establish a complete chain of circumstances and to exclude every hypothesis other than the guilt of the Appellant.
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14. We accordingly allow the appeal and set aside the conviction of the Appellant under Section 302 of the IPC. The appellant is on bail. His bail bonds are discharged.

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Ankit Gyan

Appeal allowed.