CHANDRU @ CHANDRASEKARAN

v.

STATE REP. BY DEPUTY SUPERINTENDENT OF POLICE CB CID AND ANR.

(Criminal Appeal No. 1193 of 2011)

FEBRUARY 12, 2019

[SANJAY KISHAN KAUL AND DEEPAK GUPTA, JJ.]

Penal Code, 1860:

s.302 r/w. s. 120B – Murder – Prosecution case based on circumstantial evidence – Conviction by the trial court – High Court affirmed the conviction in appeal – On appeal, held: There was inconsistency in the statement of the complainant (PW1) – There was delay in filing private complaint – The private complaint which was filed four years later was contrary to the first complaint which was filed immediately after the incident – Evidence of PW1 and PW5 cannot be relied on as they did not come to the court with clean hands – The circumstances relied on by the prosecution cannot lead to the inference that it is the accused alone who committed the offence – In view of inconsistencies in medical evidence, prosecution has even failed to prove beyond reasonable doubt that the death was homicidal – Thus prosecution miserably failed to link the accused with the death of the deceased – The appellants-accused are entitled to be acquitted.

Evidence:

Circumstantial evidence – Appreciation of – Held: In the case of circumstantial evidence it should be observed that (1) circumstances leading to inference of guilt must be proved beyond doubt; (2) circumstances should unerringly point to the guilt of the accused (3) circumstances should be so linked to form a chain leading to only one conclusion i.e. guilt of accused and (4) There is probability of the crime having been committed by a person other than the accused.

Allowing the appeals, the Court

HELD: There are no eye-witnesses to the case and this is a case based on circumstantial evidence. The circumstances relied upon by the prosecution which lead to an inference to the

guilt of the accused must be proved beyond doubt. The circumstances should unerringly point towards the guilt of the accused. The circumstances should be linked together in such a manner that the cumulative effect of the chain formed by joining the links is so complete that it leads to only one conclusion i.e. the guilt of the accused. That there should be no probability of the crime having been committed by a person other than the accused. [Paras 9 and 11][112-C, 113-D-F]

Hanumant v. State of Madhya Pradesh **AIR 1952 SC 343 : [1952] SCR 1091 – relied on.**

Wills on Circumstantial Evidence **(Chapter VI) by Sir Alfred Wills Butterworths, Seventh Edition, Pp 296-329 – referred to.**

2.1 In a case based on circumstantial evidence it is always better for the courts to deal with each circumstance separately and then link the circumstances which have been proved to arrive at a conclusion. In the present case, though a reference has been made to some circumstances, the circumstances have not been discussed separately. [Para 13][113-G]

2.2 Though the circumstance of last seen together is proved, the manner in which the accused reached Chennai and the guest house in question suggests a total different story. It was not the accused, who had organised the trip but it was the deceased, who had organised the trip and, therefore, it cannot be said that the accused had taken the deceased to the guest house with the intention of killing him. This assumption by both the courts below is based on no evidence. [Para 13] [114-B, C, 115-B-C]

2.3 Medical evidence led in this case clearly indicates that the deceased died due to overdose of Tidijesic. It is not disputed that 4 ml of Tidijesic was injected into the wrist of the deceased. The medical evidence clearly shows that after chemical analysis it was found that the amount of the offending substance found in the blood of the deceased would be equal to injecting 40 ml of Tidijesic. Therefore, there is no manner of doubt that the deceased died due to overdosing of drug. The prosecution, by means of the medical evidence, has failed to link the accused with the death of the deceased. The prosecution has failed to

prove the exact time of death of the deceased. The deceased was first injected an injection between 9.30 p.m. to 10.00 p.m. As per doctor, the effect of this could end in about six hours. Therefore, the possibility of the deceased getting up himself in the middle of the night to inject himself cannot be ruled out. There is also the possibility of his calling some other person to inject him with the drug. Even more importantly, the prosecution has failed to prove where the balance 36 ml of drug came from. Who got this drug and when? There is no evidence that the accused purchased this drug. No recovery has been made from them and, therefore, though it stands proved that the deceased died due to overdose of drug, the prosecution has miserably failed to link the accused with the death of the deceased. [Para 13][115-E, 116-E-G]

2.4 The motive put forth by prosecution is that PW-10 was close to accused No.1, who introduced her to the deceased. According to the case set up by the prosecution, the two had developed a close relationship and were regularly chatting with each other on phone and through SMS-es. This was not liked by Accused No.1, who thereafter conspired with accused No. 2 to kill the deceased by overdosing him. PW-10 in her statement has not at all supported the prosecution case. No other evidence has been led to prove that PW-10 had any special relationship with accused No.1 or that she had developed any special relationship with deceased. In the first complaint filed by PW-1, there is no mention of PW-10, much less of her having any affair with either the accused or the deceased. This was brought out for the first time only in the complaint filed four years after the death of the deceased. There is no explanation for this long silence of four years. Therefore, the motive has not been proved. [Para 13][117-A-B, D, E-F]

2.5 Both the courts below have come to the conclusion that accused No.2 was asked by accused No. 1 to commit the crime because accused No.2 was a medical student and he alone knew how to inject the substance into the body of the deceased. Such inference drawn by the courts below was totally ill founded. From the evidence on record it stands established that the deceased was a drug addict and had been taking injectible drugs for a long time. It is well known that such drug addicts can easily inject themselves. What has happened in the present is not clear

but it cannot be said with certainty that accused No.2 had injected the poisonous substance into the body of the deceased. There is no evidence in this regard. Even as per the prosecution, accused No.2 had no motive to kill the deceased. Therefore, the inference drawn by the High Court as well as the trial court that accused Nos. 1 and 2 had conspired or had the common intention of murdering the deceased is not based on any cogent or reliable evidence. [Para 13][117-G-H, 118-A-C, E]

2.6 There is inconsistency in the statement of PW-1. The private complaint filed by him four years later is contrary to the first complaint filed by him immediately after the occurrence. His explanation is that he was asked to sign on two blank papers by the police. In case the version of PW-1 that his signatures were taken on blank papers was correct, then he would have definitely said so, much earlier. He would have reported the matter to the higher authorities or made mention of this in the petitions filed in the High Court. Despite a pointed query to the counsel for the original complainant and the informant and the State, they failed to point out whether any such complaint had been made by PW-1 or PW-5. Therefore, the version of PW-1 that his signatures were obtained on blank sheets of papers is not acceptable. This also casts a doubt on the veracity of the statement of PW-1. [Para 14][118-F-H, 119-B-C]

2.7 There is delay in filing the private complaint. After the charge-sheet was filed against 'V' by the Investigating Officer (DW-4), neither PW-1 nor PW-5 filed any protest petition to the effect that the accused should also be arraigned as accused. They let the matter go on and it was only after 'V'died that the private complaint was filed. There is no explanation why no protest petition was filed when the police had only made out a case against accused 'V' and that too under Section 304 IPC and not murder. [Para 14][119-D-E]

2.8 PW-1 and PW-5 are not coming to the Court with clean hands. The motive has been introduced after four years. The father and the maternal uncle of the deceased never brought up the issue of the deceased having conversations with PW-10 at any earlier stage. Therefore, PW-1 and PW-5 are not coming to the court with clean hands. They have cooked up the story of signing on blank papers and also cooked up the story relating to the motive. Therefore, their evidence is not reliable and a person cannot be convicted on the basis of such evidence. [Para 14][119-F-G]

2.9 The circumstances proved cannot lead to the inference that it is the accused alone who committed the offence. In fact, the prosecution has even failed to prove beyond reasonable doubt that the death is homicidal in view of the inconsistencies in the medical evidence. Even otherwise, it is not proved that it was the accused who injected the deceased and the possibility of the accused injecting himself or some other person doing so cannot be ruled out. [Para 15][120-C]

Case Law Reference

[1952] SCR 1091 relied on Para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1193 of 2011

From the Judgment and Order dated 30.11.2010 of the High Court of Madras at Madurai Bench in Crl. A. No. 592 of 2010

WITH

Criminal Appeal No. 253 of 2019.

M. N. Rao, Sr. Adv., Gaurave Bhargava, Raj Kamal, Ms. Promila, Subash Sagar, S. Thananjayan, Adv. for the Appellant.

Sanjay Hegde, Sr. Adv., Nithin Saravanan, Ms. Arunima Singh, Pranjal Kishore, Ms. Priyadarshini, Anil Kumar Mishra-I, Balaji Srinivasan, Ms. Purbitaa Mitra, R. Naveen Raj, K. V. Vijayakumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

1. Leave granted in appeal arising out of SLP (Crl.) No.2306 of 2011.

2. Both the appeals are being disposed of by a common judgment.

3. The undisputed facts are that the deceased Arun was a friend of accused Siva @ Sivaprakash, Accused No.1. The deceased along with Accused No. 1 and Chandru @ Chandrasekaran, Accused No. 2, travelled to Chennai on 30.10.2004. They went to Meena Guest House, run by M. Sheik Davood (PW-3) at about 9 p.m. where room no. 203 was allotted to them. At about 9.30 p.m. Venkatesh @ Venki came to the room. Venki injected 4 ml of Tidijesic drug into the left wrist of

A deceased Arun. Venki also used 2 ml drug for himself. Thereafter, Venki left the guest house. Next morning i.e. on 31.10.2004, the two appellants herein called Venki since Arun did not get up. The room boy of the lodge viz., Sankar (PW-4) complained to the Manager of the lodge that a lot of people were coming into room no. 203. It was found that Arun was dead. Thereafter, Iqbal (PW-2), working as Manager in the company B owned by father of the deceased Arun and Ponsekar (PW-1), maternal uncle of the deceased came to the room.

4. PW-1 filed a complaint on 31.10.2004 at 9.45 a.m., in which he stated that his nephew Arun was earlier studying in an engineering college at Chennai. However, he was not studying properly and had C developed some bad habits and, therefore, he was shifted to a college at Thoothukudi. The relevant portion of the complaint is to the effect that on 31.10.2004 at about 7.30 a.m. he had received a call from Iqbal (PW-2) informing him that his nephew Arun, who stayed the night in Room No.203 of Meena Guest House had consumed heavy dose of a D drug through injection and is unconscious. He immediately went to the guest house where he found that his nephew was dead. He thereafter went to Triplicane Police Station and lodged the report.

5. On the basis of the aforesaid report a case being Crime No.1150 of 2004, was registered. The body of the deceased was sent for post-mortem. Dr. A.N. Shanmugham (PW-6) conducted the post- E mortem. He stated that he could not say with certainty what was the cause of death but it was possible by drug injection. Venki was arrested in connection with the said crime and he allegedly made a confessional statement to the police on 08.11.2004 which led to the discovery of Tidijesic syringe, empty ampoules, unused Tidijesic ampoule etc.. PW-1, the maternal uncle of the deceased, filed a petition in the High Court F of Madras in February, 2005 seeking transfer of the investigation to some other agency since he was not happy with the manner in which the case was being investigated. The High Court vide order dated 28.02.2005 transferred the investigation to the CB CID, Tamil Nadu. There were three suspects before the police viz., Venkatesh @ Venki, G Sivaprakash @ Siva and Chandrasekaran @ Chandru. All three were subjected to Polygraph, Brainmapping and Narcoanalysis tests at a Forensic Science Laboratory. According to the Investigating Officer (DW-4), who carried the investigation, the two appellants herein cleared the said tests and there was no suspicion against them since they disclosed no signs of deception. However, during the tests, Venki's answers were H found deceptive.

6. In the year 2006, PW-5, father of the deceased, filed a petition in the Madras High Court for transferring the investigation of the case to the Central Bureau of Investigation (CBI). This petition was rejected by the High Court on 08.02.2008. Meanwhile, on 23.01.2008, more than three years after the incident, a charge-sheet was filed by the CB CID under Section 173 of the Criminal Procedure Code (for short 'CrPC') only against Venkatesh @ Venki under Section 304 Part II of the Indian Penal Code (for short 'IPC'). The present accused (appellants herein) were cited as prosecution witnesses in the said charge-sheet. Venki died after the filing of the charge-sheet but before trial of the case on 21.07.2008.

7. It was only thereafter that PW-1, maternal uncle of the deceased, filed a private complaint before the court which is Exhibit P-1. In this complaint it was stated that the two accused and the deceased had stayed in Room No. 203 and Venki came to the room at the invitation of the accused Chandru. Venki was a drug peddler and Arun was not in the habit of taking drugs. On the request of the accused, Venki had injected 4 ml of Tidijesic injection in the left wrist of the deceased. It was also alleged that Venki was paid Rs.50/- by the accused Siva for his services. According to this complaint, Arun had been injected for the second time in the left arm inner portion. When this witness went to the room No. 203, Venki was present and told the complainant that the accused had given excess narcotic drugs on the left inner portion of the arm due to which the deceased died. In the complaint it was also stated that immediately after he had visited the guest house on 31.10.2004, he had gone to the Triplicane Police Station, where the police forcibly obtained his signatures on two blank papers. It was alleged that the FIR was lodged by the police in connivance with the two accused. In this complaint it is also mentioned that there were marks of injecting two injections and, according to the report of the Forensic Science Laboratory, a huge amount of narcotic substance had been injected into the deceased which caused his death. In this complaint it was also alleged that the accused Siva had close association with PW-10 (hereinafter referred to as 'R'). According to the complainant, R (PW-10) was introduced to the deceased Arun and they used to regularly talk to each other on phone every day and therefore, accused Siva could not tolerate that his girlfriend should shift loyalty to some other person. Therefore, he approached Chandru, who was a student in a medical college and with his help injected excess dose of Tidijesic with the intention of killing Arun.

A 8. After the filing of the private complaint, the metropolitan magistrate recorded the statements of seven witnesses and found sufficient grounds for proceeding with the case under Section 302 IPC. Thereafter, the case was committed to the Court of Sessions and charges were framed against the accused, who pleaded not guilty. The evidence of the witnesses were recorded. Accused also examined four witnesses. B The trial court convicted the accused for having committed the offence punishable under Section 302 IPC read with Section 120B IPC and sentenced them to undergo life imprisonment. Aggrieved, the accused filed two separate criminal appeals, which have been dismissed. Hence, the present appeals.

C 9. Admittedly, there are no eye-witnesses to the case and this is a case based on circumstantial evidence. The law with regard to appreciation of circumstantial evidence has been clearly enunciated in the case of ***Hanumant v. State of Madhya Pradesh***[1], wherein this Court held as follows:

D "**10**……It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the E accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to F show that within all human probability the act must have been done by the accused."

10. This law has been consistently followed and has been repeated in catena of authorities. It is not necessary to refer to all the authorities. However, we may refer to Sir Alfred Wills book ***Wills on Circumstantial Evidence*** (Chapter VI)[2], in which he has laid down the following Rules G specially to be observed in the case of circumstantial evidence:

[1]AIR 1952 SC 343
[2].Butterworths, Seventh Edition, Pp 296-329

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"RULE 1. – The facts alleged as the basis of any legal inference must be clearly proved, and beyond reasonable doubt connected with the factum probandum.....

RULE 2. – The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability.....

RULE 3. – In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits.....

RULE 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.....

RULE 5. – If there by any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

11. The law can be summarised in the following terms:

1. The circumstances relied upon by the prosecution which lead to an inference to the guilt of the accused must be proved beyond doubt;
2. The circumstances should unerringly point towards the guilt of the accused;
3. The circumstances should be linked together in such a manner that the cumulative effect of the chain formed by joining the links is so complete that it leads to only one conclusion i.e. the guilt of the accused;
4. That there should be no probability of the crime having been committed by a person other than the accused.

12. It is in the light of the aforesaid law that we have to consider the evidence and the circumstances relied upon by the courts below.

13. In a case based on circumstantial evidence it is always better for the courts to deal with each circumstance separately and then link the circumstances which have been proved to arrive at a conclusion. Unfortunately, in this case, though a reference has been made to some circumstances, the circumstances have not been discussed separately. Therefore, we propose to discuss the various circumstances relied upon by the prosecution:

1. <u>LAST SEEN TOGETHER</u> –

As far as this circumstance is concerned, the same stands proved. It is the case of all that Room No. 203 in Meena Guest House was hired by the two accused and the deceased. Venki came at about 9.30 p.m., but he left at 10.15 p.m. Thereafter the lodge was locked. Therefore, this circumstance is proved.Though this circumstance is proved, we must also look into the circumstances under which the accused were last seen together with the deceased. The case of the prosecution is that it is the accused who took the deceased to the room with the intention of killing him since the accused Siva suspected that R (PW-10) was having an affair with the deceased. However, the manner in which the accused reached Chennai and the guest house in question suggests a total different story. The maternal uncle of the deceased (PW-1) states that one Jeyaraj, an employee of PW-5 informed him over the phone at about 6/7 p.m. on 30.10.2004 that the deceased Arun along with his friend Siddharth was coming to stay in the night with PW-1 at Chennai. A few minutes later, PW-1 talked to his nephew Arun, who also told him that he would be coming to his uncle's house but did not come. Siddharth is the son of Gomti Pandian (PW-7). According to her, Siddharth told her that he was going to Chennai along with his friend Arun (deceased) to purchase some clothes. She was reluctant to send her son with his friend but then she talked to Arun who told her that they would be going to Chennai by bus and convinced her to send Siddharth with him. She dropped Siddharth at the bus stand. Later she came to know that her son Siddharth had gone to Chennai along with the deceased Arun and three other persons in a car which had met with an accident. She was informed about this by Kala Devi (PW-8), whose son Mathesh had also travelled in the same car. Thus, it is clear that it was Arun (deceased), who convinced Siddharth's mother to send Siddharth with him. This witness also stated that later her son informed her that the car had met with an accident and, thereafter, he and Mathesh did not proceed to Chennai and returned to their homes. PW-8 states that her son Mathesh had told her that he was going to Coimbatore. Next morning she received a call from her brother's son. He told her that the car in which Mathesh was travelling had met with an

accident. She was also told that Mathesh along with his friends Siva, Chandru, Siddharth and Arun came to the house of her brother and thereafter Mathesh returned to home. Thus, it is clear that Siddharth and Mathesh were also travelling in the car and they would have also gone to Chennai but for the fact that the car met with an accident. Thereafter, Siddharth and Mathesh did not proceed further and returned to their homes. As such, it is clear that it was not the accused, who had organised the trip but it was the deceased, who had organised the trip and, therefore, it cannot be said that the accused had taken the deceased to the guest house with the intention of killing him. This assumption by both the courts below is based on no evidence.

2. MEDICAL EVIDENCE

Medical evidence led in this case clearly indicates that the deceased died due to overdose of Tidijesic. It is not disputed that 4 ml of Tidijesic was injected into the wrist of the deceased by Venki, who administered 2 ml of the same substance into himself and thereafter the deceased died. The evidence of Dr. R. Baskaran (PW-11), who is Professor and Head of the Department of Legal and Forensic Medicines, Royapettai Government Hospital, Chennai clearly shows that after chemical analysis it was found that the amount of the offending substance found in the blood of the deceased would be equal to injecting 40 ml of Tidijesic. Therefore, there is no manner of doubt that the deceased died due to overdosing of drug.

PW-11 stated that if a 20 ml syringe is used then about 40 ml of Tidijesic could be injected in two attempts. However, if a 5 ml syringe is used, it would require 8-10 attempts. He clearly states that he cannot tell when and how this 40 ml Tidijesic was injected into the body of the deceased. He also could not state what time the death had occurred. He also stated that it takes 6 to 24 hours for the drug to take effect and this would further depend upon the quantity of the drug, the physique and the actions of the person injected. Therefore, his statement does not help us with regard to the time of death or with regard to the number of attempts in which the drug was injected into the body of the deceased. Even in the post-mortem report the approximate time of death has not been indicated. Dr. A.N. Shanmugham

(PW 6), who conducted the post-mortem also could not say when the death took place.

Dr. A.N. Shanmugham (PW-6) in his statement had stated that injuries caused by the needle due to injection of medicine were found in fore arm, ankle of front foot, front and middle fore arm. He has been confronted with the post-mortem report (PD-5), in which there is mention of only two injection marks – one in front of left elbow joint and one in middle of left fore arm. It is clearly mentioned that no other external or internal injuries seen over the body. He has not been able to give a proper explanation why he did not mention other injuries in the post-mortem report. This would mean that the deceased was injected only twice.

It is the case of the prosecution that on the first occasion the deceased was injected with 4 ml Tidijesic. Therefore, 36 ml could not have been injected in one go on the next occasion. The police has not recovered any syringe or other material from the room. As per the prosecution case, the lodge was locked at about 10.30 p.m.. The next morning the deceased was found dead. No recoveries of any ampoules or syringe have been made from the accused or at their instance to connect them with the offence.

The prosecution, by means of the aforesaid medical evidence, has failed to link the accused with the death of the deceased. The prosecution has failed to prove the exact time of death of the deceased. The deceased was first injected an injection between 9.30 p.m. to 10.00 p.m.. As per doctor, the effect of this could end in about six hours. Therefore, the possibility of the deceased getting up himself in the middle of the night to inject himself cannot be ruled out. There is also the possibility of his calling some other person to inject him with the drug. Even more importantly, the prosecution has failed to prove where the balance 36 ml of drug came from. Who got this drug and when? There is no evidence that the accused purchased this drug. No recovery has been made from them and, therefore, we are of the view that though it stands proved that the deceased died due to overdose of drug, the prosecution has miserably failed to link the accused with the death of the deceased.

3. MOTIVE

The motive put forth is that R (PW-10) was close to accused Siva, who introduced her to Arun. According to the case set up by the prosecution, the two had developed a close relationship and were regularly chatting with each other on phone and through SMS-es. This was not liked by Siva (Accused No.1), who thereafter conspired with Chandru (Accused No. 2) to kill the deceased by overdosing him. R (PW-10) in her statement has not at all supported the prosecution case and according to her, she had never met Arun but had talked to him over phone and that too occasionally. She also stated that she and the deceased Arun would exchange SMS-es which were usual in nature. She, in cross-examination, denied the suggestion that she used to talk to Arun every day. She stated that they talked generally about matters relating to college. She also denied that she had any special relationship with Siva. According to her, Siva was her friend being a college-mate. No other evidence has been led to prove that R (PW-10) had any special relationship with accused Siva or that she had developed any special relationship with deceased Arun. The only evidence in this regard is the statement of R (PW-10), which does not support the prosecution case at all.

In this regard, it would also be pertinent to mention that in the first complaint filed by PW-1, there is no mention of R (PW-10), much less of her having any affair with either the accused or the deceased. This was brought out for the first time only in the complaint filed four years after the death of Arun. There is no explanation for this long silence of four years. Therefore, we are clearly of the view that the motive has not been proved. We must also remember that the accused and the deceased were good friends. They had studied for many years together and there is not even an iota of evidence about such love triangle.

4. CHANDRU WAS A MEDICAL STUDENT-

Both the courts below have come to the conclusion that Chandru was asked by Siva to commit the crime because Chandru was a medical student and he alone knew how to inject the substance into the body of the deceased. We are constrained

to observe that the inference drawn by the courts below was totally ill founded. Why would Chandru kill another human being just on the asking of the accused Siva? Chandru was a medical student, studying in a profession meant to save lives and not to kill people. From the evidence on record it stands established that the deceased was a drug addict and had been taking injectible drugs for a long time. It is well known that such drug addicts can easily inject themselves. What has happened in this case is not clear but it cannot be said with certainty that Chandru had injected the poisonous substance into the body of the deceased. There is no evidence in this regard. As we have discussed above, it was not only Siva and Chandru who were coming to Chennai with deceased Arun but Siddharth and Mathesh were also coming to Chennai in the same car. However, they went back only after the car met with an accident. All these boys were in their late teens or early 20s and two of them got scared after the accident and they went to the homes of their relatives and from there they contacted their respective mothers. Since they had obtained permission of their mothers by giving false excuses, they got scared and went back. Even as per the prosecution, Chandru had no motive to kill Arun. Therefore, the inference drawn by the High Court as well as the trial court that Siva and Chandru had conspired or had the common intention of murdering Arun is not based on any cogent or reliable evidence.

14. Other than the circumstances referred to above, there are other circumstances which go against the prosecution which we shall refer to now:

1. <u>Inconsistency in the statement of PW-1</u> – PW-1 is the maternal uncle of the deceased. In his first complaint made in the police station on 31.10.2004, there is no reference to R (PW-10) or other facts which have been stated at a later stage. The private complaint filed by him four years later is contrary to the first complaint filed by him immediately after the occurrence. His explanation is that he was asked to sign on two blank papers by the police. First of all, we see no reason why the police in a case of this nature would try to help the accused and shield the actual criminal. Secondly, there is no material on record to show that PW-1, the maternal uncle or PW-5, father of the deceased,

ever complained to any authority that PW-1 had been forced to sign two blank papers. This is a case where the maternal uncle and the father of the deceased had approached the High Court on at least two occasions for transfer of the investigation. They succeeded once and failed on the second occasion. In case the version of PW-1 that his signatures were taken on blank papers was correct, then he would have definitely said so much earlier. He would have reported the matter to the higher authorities or made mention of this in the petitions filed in the High Court. Despite a pointed query to the counsel for the original complainant and the informant and the State they failed to point out whether any such complaint had been made by PW-1 or PW-5. Therefore, we do not accept the version of PW-1 that his signatures were obtained on blank sheets of papers. This also casts a doubt on the veracity of the statement of PW-1.

2. Delay in filing the private complaint - It is true that PW-1 and PW-5 were moving the High Court for transfer of the case to some other investigating agency but, at the same time, it would be pertinent to mention that after the charge sheet was filed against Venki by the Investigating Officer (DW 4), neither PW-1 nor PW-5 filed any protest petition to the effect that the accused (appellants herein) should also be arraigned as accused. They let the matter go on and it was only after Venki died that the private complaint was filed. There is no explanation why no protest petition was filed when the police had only made out a case against accused Venki and that too under Section 304 IPC and not murder.

3. PW-1 and PW-5 are not coming to the Court with clean hands – The motive has been introduced after four years. The father and the maternal uncle of the deceased never brought up the issue of the deceased having conversations with R (PW 10) at any earlier stage. Therefore, PW-1 and PW-5 are not coming to the court with clean hands. They have cooked up the story of signing on blank papers and also cooked up the story relating to the motive. Therefore, their evidence is not reliable and a person cannot be convicted on the basis of such evidence.

15. All that is proved is that the deceased and the accused were sleeping in one room and the deceased died due to overdose of drug.

A The prosecution had miserably failed to prove that the accused injected this drug. It is the case of the prosecution that the first injection was administered by Venki, which was only 4 ml. There is possibility of the deceased injecting himself on the second occasion sometime in the middle of the night or early in the morning. In this context, we must remember that the doctor, who conducted the post-mortem has not given any B approximate time of death of the deceased which could have helped us in the matter. The circumstances proved cannot lead to the inference that it is the accused alone who committed the offence. In fact, the prosecution has even failed to prove beyond reasonable doubt that the death is homicidal in view of the inconsistencies in the medical evidence C dealt by us above. Even otherwise, it is not proved that it was the accused who injected the deceased and the possibility of the accused injecting himself or some other person doing so cannot be ruled out.

16. In view of the above discussion we allow both the appeals, set aside the judgment dated 30.11.2010 of the High Court in Criminal D Appeal No.592 of 2010 and 636 of 2010 and judgment dated 24.09.2010 of the Additional District and Sessions Judge, Fast Track Court No.V, Chennai in S.C. No.237 of 2009. The accused-appellants are acquitted. They are directed to be released immediately unless required in any other case. Pending application(s), if any, stand(s) disposed of.

Kalpana K. Tripathy Appeals allowed.