

*Before Hemant Gupta & Raj Rahul Garg, JJ.*

**TRIBHAWAN—Appellant**

*versus*

**STATE OF HARYANA—Respondent**

**CRA-D-No.101-DB of 2010**

August 19, 2015

*Indian Penal Code, 1860 — Ss.302 and 34 — Code of Criminal Procedure, 1973 — S. 374 — Appellant tried along with Surender @ Bijli u/s 302 r/w S. 34 IPC for murder of Uma Tante — Appellant convicted by trial Court on the basis of circumstantial evidence — Co-accused acquitted — Appeal allowed — Held — In a case relating to circumstantial evidence, motive assumes great importance but to say that absence of motive would dislodge entire prosecution story is perhaps to give this one factor more importance than due.*

*Held* 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 importance which is not due and the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

(Para 12)

*Further held* that before holding conviction of an accused on the basis of circumstantial evidence, the Court must satisfy itself:

1. that the circumstances from which the inference of guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt;
2. that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused;
3. that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him;
4. that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved";

5. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
6. the circumstances should be of a conclusive nature and tendency;
7. they should exclude every possible hypothesis except the one to be proved;
8. there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused;
9. Whether a chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted.

(Para 13)

*Further held*, that only on the basis of recovery of knife at the instance of accused-appellant, he cannot be convicted. As otherwise, there is no evidence on the file to prove the guilt of the accused beyond reasonable doubt. The chain of evidence is not complete. The circumstances like extra judicial confession, recovery of tractor trolley driven by the deceased from the possession of accused-appellant, from which the inference of guilt is to be drawn against the accused-appellant have not been fully established by unimpeachable evidence beyond a shadow of doubt. The prosecution case is full of doubts. The circumstances are not conclusive in nature so as to establish the guilt of the accused-appellant.

(Para 20)

Aditi Girdhar, Advocate as amicus-curiae  
*for the appellant.*

Rajesh Gaur, Addl. Advocate General, Haryana.

### **RAJ RAHUL GARG, J.**

(1) This is an appeal preferred by Tribhawan son of Baleshwar Paswan who was convicted for an offence under Section 302 IPC by the court of Learned Additional Sessions Judge, Bhiwani, vide impugned judgment dated 31.10.2009.

(2) Initially Challan was presented against Surender alias Bijli

son of Nar Singh and Tribhawan-appellant. Learned Trial Court acquitted accused Surender alias Bijli whereas convicted the appellant-Tribhawan.

(3) Sher Singh son of Data Ram, resident of village Beeran, gave information to the police to the effect that on 05.06.2007 at about 1.00 PM, he went to his field where he had sown Bajra crops. At that time, he spotted dead body of a young man lying along side water course (Nala Paani). He also reported that there was cut mark on the neck below the chin of the dead body. He also reported that his brother Mahabir also reached there who had also seen the dead body of aforesaid young man. After leaving his brother Mahabir near the dead body, he had come to make a report to the police. On this report, Ex. PB, a case under Section 302 IPC was registered. Investigations were conducted. SI Jaipal Singh visited the spot. Photographs of the site were obtained from Ramphal, Photographer. Inquest report was prepared. Blood stained earth was lifted from the spot which was converted into a parcel. A pair of Chappal Ex. P2 and one Parna Ex. P3 were also taken from the place of occurrence into police possession, vide memo Ex. PA and Ex. PH, respectively. By moving application Ex. PU, post-mortem on the dead body was got conducted.

(4) On 06.06.2007, MHC Badri Parshad was handed over post-mortem report, one parcel containing cloth of the deceased and one Jar which were taken into police possession, vide memo Ex. PD. Rough site plan of the place of occurrence was prepared as Ex. PB.

(5) On 07.06.2007, SI Indivar conducted the investigations of the present case. Statements of witnesses were recorded. On 11.06.2007, Kari Mehto, Jugal Mehto and Budhan Tante met SI Indivar. They were having newspaper cutting regarding identification of articles of the deceased. They identified the wearing apparels, Chappal of the deceased which were shown to them by the police. They also identified the deceased from his photographs and stated that the aforesaid articles belong to Uma Tante. The aforesaid articles were duly sealed with the seal of 'IS' into a parcel and the parcel was taken into police possession, vide memo Ex. PH. Kari Mehto etc., aforesaid persons, also disclosed that deceased-Uma Tante had a quarrel with Surender @ Bijli and Tribhawan, therefore, offence under Section 34 IPC was also added.

(6) On 14.06.2007, Bishan Sarup brought Tribhawan-appellant to SI Indivar along with tractor trolley and told him that accused-appellant Tribhawan and Bijli has made extra judicial confession before

him regarding murder of Uma Tante. He also told the police that the aforementioned accused also robbed the tractor trolley from Uma Tante which was parked in the mines at village Khanak. He further deposed that his driver brought the tractor trolley from the aforesaid place. Accused-appellant Tribhawan was arrested. Tractor trolley was taken into police possession vide memo Ex. PE. Statements of witnesses Bishan Sarup and MHC Badri Parshad were recorded.

(7) On 15.06.2007, accused-appellant Tribhawan was interrogated who suffered disclosure statement Ex. PQ to the effect that Bijli-accused had given him Rs. 20,000/- for killing Uma Tante, due to his enmity with Uma Tante. He further disclosed that after killing Uma Tante, they had thrown his dead body near Tosham-Bhiwani road in the fields of village Sangwan. He further disclosed that the weapon, with which deceased was killed, kept concealed by him at Bala Ji Stone Crusher and he can get the same recovered. He further disclosed that he can give whereabouts of Bijli resident of Paposa Dadri. He can also demarcate the spot where the dead body was thrown. In pursuance with the aforesaid disclosure statement, accused-appellant Tribhawan gave demarcation of the spot where the dead body was thrown. In this regard memo Ex. PN was prepared. Thereafter, leading the police party to the Bala Ji Stone Crusher, he got recovered knife after removing the earth backside of the wall of residential house situated at Bala Ji Stone Crusher, after taking out the same. Sketch plan of the place of recovery of knife was prepared as Ex. PM/1. Knife was duly sealed with the seal of 'IS' and then taken into police possession, vide memo Ex. PM. Site plan of the place of recovery of knife was prepared as Ex. PV. Scaled site plan of the spot Ex. PL was also prepared. The report FSL, Ex. PF and Ex. PF/1, were obtained.

(8) As co-accused Surrender @ Bijli is not before this Court, therefore, we need not mention about the investigations relating to him.

(9) After completion of necessary investigations, Challan was put in the Court. Accused-appellant was charge-sheeted for committing offence punishable under Section 302/34 IPC. However, prosecution has failed to prove its case against co-accused Surrender @ Bijli, therefore, he was acquitted and accused-appellant Tribhawan was convicted for committing offence punishable under Section 302 IPC. After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded. Accused denied each allegation of the prosecution appearing against him and pleaded his innocence. The defence taken by the accused-appellant is this that the case is false and

further that he has no concern with this case.

(10) We have heard Ms. Aditi Girdhar, Advocate as amicus-curiae for the appellant and Mr. Rajesh Gaur, Addl. Advocate General, Haryana for the State of Haryana besides appraising the entire evidence and material coming on record.

(11) It is a case based on circumstantial evidence. There is no eye-witness of this case. Kari Mehto PW-5 is the person with whom Uma Tante- deceased was working as driver on tractor trolley No. 2387 on the day of occurrence. He deposed that few days prior to the occurrence, a quarrel took place between Uma Tante, Tribhawan and Surender alias Bijli. He further identified the accused present in the Court stating that they are the same with whom quarrel of Uma Tante had taken place. SI Indivar PW-15 deposed that on 15.06.2007, accused-appellant Tribhawan on interrogation gave disclosure statement Ex. PQ in the presence of Constable Suresh Kumar and Wazir Singh disclosing that Surender @ Bijli had given him Rs. 20,000/- for killing Uma Tante due to enmity of Bijli with Uma Tante. He further disclosed that after killing Uma Tante they have thrown his dead body in a field near Tosham- Bhiwani road in the filed of village Sangwan. He further made disclosure statement regarding keeping concealed weapon of offence and also gave nishandehi of the spot where the dead body was thrown. Of-course, the confessional statement before the police by which the accused inculpated himself in this crime is not admissible. However, the disclosure statement regarding demarcation of the spot where the dead body was thrown and regarding concealment of weapon of offence can well be taken into consideration.

(12) 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 importance which is not due and the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

(13) Before holding conviction of an accused on the basis of circumstantial evidence, the Court must satisfy itself:

1. that the circumstances from which the inference of guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt;
2. that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused;

3. that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him;
4. that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved";
5. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
6. the circumstances should be of a conclusive nature and tendency;
7. they should exclude every possible hypothesis except the one to be proved;
8. there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused;
9. Whether a chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted.

(14) After hearing the arguments of both the sides, we conclude to hold that in this case prosecution has failed to complete the chain of evidence consistent with the guilt of the accused-appellant. Right from the very beginning till end, there are gaps in the prosecution case which have made prosecution case highly doubtful.

(15) First of all, as per Mahabir PW-1, on 05.06.2007 at about 1-1.30 PM, he went to the field, known as *Agla field*, and saw the dead body of a young man having a cut mark on the neck of the dead body. He informed Sher Singh about it and thereafter Sher Singh went to the Police Station, Tosham for lodging the report. Sher Singh when appeared as PW-2 stated that about 14-15 months back he had gone to his fields where Bajra crop was sown. He noticed a dead body of a young male having a cut mark on his neck. In the meanwhile, his brother Mahabir also reached the field who had also seen the dead body of aforesaid young male. He left his brother Mahabir near the dead

body and then came to the police for lodging the report. Thus, the statements of both these witnesses are contradictory. As per PW-1 Mahabir, he informed Sher Singh about the dead body lying in his field whereas per PW-1 Sher Singh, he himself spotted the dead body and Mahabir PW-1 came later on in the field. Thus, the statements of PW-1 and PW-2 are not consistent. On the statement of Sher Singh PW-2, FIR of this case was lodged which is Ex. PB. Thus, the very basis of FIR is stumbling at the very threshold.

(16) Kari Mehto PW-5 deposed that he was having a tractor trolley No. 2387 and Uma Tante-deceased was driver on his tractor. He further deposed that on the intervening night of 4/5.06.2007, Uma Tante went to the mines at Khanak to bring crushed *Rori*. He did not come back. He searched for him. Bishan Sarup PW-10 before whom accused-appellant made extra judicial confession corroborated the statement of PW-5 on the point that deceased was driver on the tractor of Kari Mehto for the last about 5-6 months prior to his death. He further deposed that Uma Tante came to him on 04.06.2007 at about 1.00 PM and took money from him. He gave him Rs. 100/- for meal etc. Thereafter, Uma Tante left for Khankak. He further deposed that Kari Mehto PW-5 met him at about 7-8 PM on 04.06.2007 and thereafter he met him at 1.00 PM on 05.06.2007 at Bhiwani at his factory site. As per this witness, the crushed stones were to be taken to village Kalinga. He had gone to village Kalinga on 04.06.2007 at about 3.00 PM. Kari Mehto was not there at that time. He did not wait for the deceased. On 05.06.2007, he went to village Kalinga at 10.00 AM but the deceased and the tractor trolley had not reached there upto that time. Even upto 05.06.2007, deceased and tractor had not reached back at village Kalinga. As per this PW, thereafter, they searched for the deceased in entire Tosham area but did not lodge report about the missing of the deceased as well the tractor trolley. There is no reasonable explanation on the file as to why Kari Mehto, employer of the deceased, did not lodge report with the police at all. He along with Tribhawan, Budhan Tante and Jugal Mehto had gone to the police station for the purpose of identification of the articles of Uma Tante.

(17) As per PW-10 Bishan Sarup, accused-appellant Tribhawan as well co-accused Surender @ Bijli made extra judicial confession before him on 13.06.2007. He further deposed that the accused told him that they had committed a mistake and have murdered Uma Tante. He further stated that after confessing the same, accused Surender @ Bijli had run away. On the next day, accused-appellant Tribhawan came to him and then he took him to Police Station, Tosham. Surender @ Bijli

did not return on 14.06.2007. Again there is no explanation on the file as to how and under what circumstances accused- appellant Tribhawan left the place of Bishan Sarup after making extra judicial confession before him and thereafter as to how he came back again on 14.06.2007 to Bishan Sarup.

(18) Above all, as per Bishan Sarup PW-10, tractor and trolley was standing in the Police Station when he took Tribhawan to the Police Station. Badri Parshad PW-3 deposed that on 14.06.2007 Bishan Sarup produced Tribhawan, accused-appellant, in the Police Station along with a tractor trolley loaded with *Jeera-Rori* (stones). SI Indivar, Investigating Officer of the case, as PW-15 deposed that on 14.06.2007 Bishan Sarup PW-10 came to him along with Tribhawan and tractor trolley. Bishan Sarup told him that accused-appellant had made extra judicial confession before him regarding the murder of Uma Tante and also told him that they had robbed the tractor trolley from Uma Tante, which was parked in the mines in village Khanak. Driver of Bishan Sarup brought the tractor trolley from the place stated by the accused to Bishan Sarup. As discussed above, Bishan Sarup PW-10 did not corroborate this part of the statement of Investigating Officer and that of Badri Parshad PW-3. On this point, Bishan Sarup was cross-examined by the learned Public Prosecutor but nothing material could be extracted. He categorically denied having stated before the police that the tractor trolley containing crushed stones were produced by him before the police. As such the recovery of tractor trolley from the possession of accused-appellant Tribhawan is also not free from doubt.

(19) It was argued by the learned counsel for the appellant that the post- mortem on the dead body of deceased was conducted by Dr. Vinod Kumar Kangra PW-14 on 06.06.2007. He proved copy of post-mortem report as Ex. PU/1. Doctor gave the duration between death and post-mortem examination as 3 to 4 days. During the course of cross-examination, he deposed that in his opinion, the death of deceased may be caused on the night of 2/3 June, 2007. As per learned counsel for the appellant if we go by the duration given by the doctor between death and post-mortem, in that eventuality, the deceased must have died even prior to 04.06.2007. Under the above discussed circumstances, this argument of learned counsel for the appellant assumes importance. There is, in fact, no explanation in this regard on the file.

(20) As a result, only on the basis of recovery of knife at the instance of accused-appellant, he cannot be convicted. As otherwise, there is no evidence on the file to prove the guilt of the accused beyond



reasonable doubt. The chain of evidence is not complete. The circumstances like extra judicial confession, recovery of tractor trolley driven by the deceased from the possession of accused-appellant, from which the inference of guilt is to be drawn against the accused-appellant have not been fully established by unimpeachable evidence beyond a shadow of doubt. The prosecution case is full of doubts. The circumstances are not conclusive in nature so as to establish the guilt of the accused-appellant.

(21) For the reasons recorded above, finding merit in this appeal, the impugned judgment of conviction dated 31.10.2009 and order on quantum of sentence dated 04.11.2009 are set aside and by giving benefit of doubt the accused-appellant is ordered to be acquitted. Bail bonds shall stand discharged. If the accused-appellant is in custody, he may be released forthwith, if not wanted in any other case.

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*J.S. Mehndiratta*

***Before Ajay Kumar Mittal & Ramendra Jain, JJ.***

**ATTAR SINGH AND OTHERS—Petitioners**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No. 10125 of 2015**

September 03, 2015

***Constitution of India, 1950—Arts.226, 227—Land Acquisition Act, 1994—S.28, Income Tax Act, 1961—S.194A—Tax deducted at source (TDS) on interest other than interest on securities—Interest on enhanced compensation would be eligible to tax in year of receipt irrespective of the method of accounting being employed by the assessee—Can claim refund admissible by filing income tax returns in accordance to law.***

*Held that* section 4 of the Income Tax Act, 1961 (hereinafter referred to as the “1961 Act”) provides for the basis of charge on the income of the assessee whereas the tax levied is collected either by way of tax deducted at source or by direct payment by the assessee. Tax deducted at source is one of the modes of “Collection and Recovery of Tax” Prescribed under Part B of Chapter XVII of the Act. This is in substance, provisions for recovery of tax payable by the assessee and do not in any manner affect the levy or the charge of tax. In certain