SUPREME COURT OF INDIA

Majendran Langeswaran

Vs.

State (NCT of Delhi)

Crl.A.No.1300 of 2009

(P.Sathasivam and M.Y.Eqbal JJ.)

01.07.2013

JUDGMENT

M.Y. EQBAL, J.

1. This appeal by special leave is directed against the judgment and order dated 25th July, 2008 passed by the High Court of Delhi in Criminal Appeal No. 820 of 2002 whereby the judgment and order dated 9th August, 2002 passed by learned Additional Sessions Judge, New Delhi in Sessions Case No. 45 of 2001 convicting the accused-appellant under Section 302 of the Indian Penal Code, 1860 (for short, "IPC") and sentencing him to imprisonment for life and a fine of Rs. 100/- and in default of payment of fine, rigorous imprisonment for one day was maintained and the said appeal dismissed.

2. The prosecution version in a nutshell is that the Cargo Ship Motor Vessel "Lok Prem" owned by the Shipping Corporation of India was chartered by a private company of South Africa on 6th November, 1996 for carrying Chrome Alloy. The accused-appellant and the deceased L. Shivaraman along with other were helmsmen/seamen (crew members) on the said ship. When the ship was sailing from South Africa to Japan via Singapore, the auto pilot went out of order which could not be repaired for non-availability of technicians on board and thus requiring the crew on board to manually steer the ship. The accused and one M.Y. Talgharkar showed reluctance to steer the ship manually and insisted for repair of auto pilot and payment of their long overdue overtime. The ship was taken to Singapore to make the auto pilot functional but the same could not be got repaired. The accused and said Talgharkar are alleged to have instigated other crew members to insist and obtain it in writing from the Captain/Master of the ship

(PW-5 Radha Krishan Ambady) that the ship would be got repaired at Japan, otherwise they (crew members) shall not allow the moving of the ship from Singapore. When the Captain of the ship reported the matter to the Shipping Corporation of India, the General Secretary of the Union (NSUI) directed the crew members to perform their duties in obedience to lawful commands of the Captain. On 30th November, 1996, an altercation is stated to have taken place between the accused and the deceased L. Shivaraman. As the accused had sustained some cut injuries on his hands, he reported the matter to the officials. On 1st December, 1996 when the ship was on high seas, the appellant took off from his duty as helmsman on the ground of pain in his hands due to cut injuries and another helmsman Baria was asked to do the duty as replacement. As the accused and the deceased were staying in Cabin No. 25, the accused was temporarily shifted from that cabin to Cabin No. 23 due to the above incident of assault. At about 1510 hours, the accused allegedly approached IInd Officer Kalyan Singh (PW-6) with a blood- stained knife in his hand and his hands smearing in blood and is alleged to have confessed before him that he had killed L. Shivaraman. On being asked by Kalyan Singh (PW-6), the appellant handed over the blood-stained knife to him which he placed in a cloth piece without touching the same. Kalyan Singh (PW-6) then intimated the Captain and other officers. The body of L. Shivaraman was found lying in Cabin No. 23 in such a way that half of it was inside the cabin and half of it outside. The officials of Shipping Corporation of India were informed. On incident being reported, pursuant to an instruction from concerned quarter, the ship was diverted to Hongkong. On being so directed by the Captain of the ship (PW-5), Kalyan Singh (PW-6) got the body of the deceased cleaned up for being preserved in the fish room with the help of Manjeet Singh Bhupal (PW-4) and Chief Officer V.V. Muralidharan (PW-18) took photographs. The blood-stained knife was kept in the safe custody of PW-5. The accused was then apprehended, tied and disarmed before being shifted to the hospital on board. Since the ship was having Indian Flag, as per the International Treaty of which India was a signatory, the act of the accused was subject to Indian laws. Accordingly, a case bearing R.C. No. 10(S) of 1996 was registered by the Central Bureau of Investigation (CBI) against the accused on 6th December, 1996. On reaching Hongkong, the body of deceased was handed over to Hongkong Police for post mortem examination. Two CBI officers reached Hongkong on 7th December, 1996. The investigation of the case was conducted by Anil Kumar Ohri, Dy. Superintendent of Police, C.B.I. (PW-23). The Investigation Officer (I.O.) visited the ship and recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure (for short, "Cr.P.C."). The blood-stained knife (Ex. P-3) and deceased's boiler suit (Ex. 2a) as also relevant papers from the Hongkong police were taken into his possession by the I.O. The post mortem examination on the dead body was

conducted by Dr. Lal Sai Chak (PW-19). The accused was arrested and brought to Delhi where he was medico legally examined by a doctor. The specimen fingerprints and signature of the accused were obtained. The knife and the specimen fingerprints were then sent to Central Forensic Science Laboratory (CFSL) for comparison. The fingerprints of the accused had tallied with the fingerprints appearing on the knife (Ex.P- 3). The accused was charged under Section 302 IPC. In support of its case, the prosecution examined as many as 23 witnesses.

3. The trial court vide judgment and order dated 9th August, 2002 held the appellant guilty of committing the murder of L. Shivaraman taking note of the incident of assault of 30th November, 1996 in which the appellant had sustained injuries at the hands of the deceased as motive on the part of the appellant for commission of crime, the extra- judicial confession made by him to Kalyan Singh (PW-6) and presence of his fingerprints on the knife that was allegedly used as the weapon of offence.

4. Before the High Court while assailing the conviction and sentence by the trial court, it was contended that there was sufficient opportunity to force the appellant to hold the knife (Ex.P-3) to get his fingerprints thereon; that no blood was noticeable on the clothes of the appellant; that the clothes of the appellant which he was wearing at the relevant time were not seized to establish that the same carried blood stains of the deceased; two other helmsmen Baria and Talgharkar who were present when the appellant made confession before Kalyan Singh (PW-6) were not examined by the prosecution; that the weapon of offence i.e. knife (Ex.P-3) was not shown to the doctor concerned who had conducted post mortem examination on the dead body of the deceased to find out whether the injuries could have been caused by that weapon; that all the injuries could not have been caused by the said weapon of offence which had one blunt edge and the other sharp; that more than one weapon was used to cause injuries on the person of the deceased by referring to existence of another knife (Ex. 2b) in the parcel which contained deceased's boiler suit (Ex. 2a) which had also been sent to CFSL; that no fingerprints were lifted from the second knife nor the same was referred to the expert for matching with the cuts on the boiler suit; and that the second knife was also not shown to the doctor conducting post mortem on the body of the deceased to ascertain if the same could have been used as a possible weapon of offence. As regards alleged extra-judicial confession, the depositions of Captain Radha Krishan Ambady (PW-5) and Kalyan Singh (PW-6) were referred to and variance in words allegedly used by the appellant while making the same was demonstrated; absence of any mention of such a confession in the Official Log Book was also pleaded; and it was contended

that the I.O. did not detect any blood in Cabin No. 23 as the scene of crime had also been cleaned and on account of such tampering the crime could not be connected with the appellant. It was contended that it was on account of officers on board including Captain of the ship being unhappy with and inimical towards the appellant that he was falsely implicated. It was contended that the previous day incident of assault could not be reckoned as motive for fatal assault on the deceased on the following day and such motive alone in the absence of necessary links in the circumstantial evidence would not be suffice to record conviction against the appellant.

5. After appreciation of the evidence of prosecution witnesses and the documents exhibited therein, the High Court came to the conclusion that the prosecution has established the guilt of the appellant in the commission of the offence and accordingly dismissed the appeal affirming the judgment and order of conviction and sentence passed by the trial court. Hence, this appeal by special leave.

6. Mr. G.Tushar Rao, learned counsel appearing for the appellant has assailed the impugned judgment and order of conviction and sentence as being illegal and contrary to facts and evidence on record. Learned counsel submitted that the conviction is based on circumstantial evidence and a chain with regard to the circumstances leading to the guilt of the appellant has not at all been established. Counsel submitted that it is settled law that extra-judicial confession is a weak type of evidence and needs corroboration in a case dependent wholly on circumstantial evidence and in such cases the exact words used by the accused have to be reproduced, but in this case even PW-6 before whom the appellant is alleged to have made confession has not been able to reproduce the exact words and there are material contradictions in the statements of prosecution witnesses. It is contended by the counsel that the manner in which the alleged weapon of offence i.e. knife Ex.P-3 was seized and sealed is not proper and the probability of tampering with the knife cannot be ruled out. Counsel submitted that circumstances and the evidence on record indicate that the appellant was susceptible to being forced to hold the knife so as to get his fingerprints on the knife. It is surprising, counsel submitted, that there are about 14 stab wounds both minor and major on the neck and torso as per post mortem report, but there was no blood noticeable on the appellant nor did any of the witnesses noticed blood either on the clothes of the appellant or the bridge or the alleyway from the scene of occurrence to the bridge nor were the clothes of the appellant were ever seized by the Captain/Master of the ship (PW-5), IInd Officer (PW-6), the Chief Officer (PW-18), Senior Inspector Hongkong Police (PW-20) or the Investigating Officer of CBI (PW-23) and, therefore, the chain in the prosecution case of circumstantial evidence gets fatally

broken due to this aspect. It is submitted by the counsel that from the evidence it is clear that at the time when the appellant is alleged to have confessed to Kalyan Singh (PW- 6), there were two helmsmen, namely, Baria and Talgharkar and as per the evidence of the prosecution witnesses, they also could have heard the appellant, but these two persons were not examined at all which goes to show that the prosecution tried to hide something. It is contended that the knife Ex. P-3 (weapon of offence) was not shown to the doctor (PW-19) who conducted the post mortem of the deceased on 6th December, 1996 in Hongkong to take his opinion as to whether it could be Ex.P-3 alone which could have caused the injuries on the body of the deceased and in the absence of such examination, the weapon remains unconnected to the injuries on the deceased. Counsel contended that the injuries on the deceased were not consistent with the weapon (Ex.P-3) and that too in the absence of the opinion of the doctor who conducted post mortem and was not shown the alleged weapon of offence. The counsel contended that from the evidence on record it is clear that there was more than one weapon containing the blood of the deceased as apart from Ex.P-3 knife, there was another knife about which there is no mention nor any plausible reason as to wherefrom it came and why no one bothered about it. The counsel submitted that the doubt created by this circumstance has neither been looked into, considered or removed by the prosecution at all and this being a case purely based on circumstantial evidence, the benefit of doubt ought to be extended to the appellant. The prosecution, counsel submitted, is expected and is duty bound to eliminate every element of suspicion in every circumstance relied upon by it so as to enable the courts to come to the hypothesis consistent with the guilt of the accused and simultaneously inconsistent with the innocence of the accused person. It is contended that the Captain of the ship got the scene of offence cleaned and no site plan of the scene of occurrence prepared.

7. Mr. Mukul Gupta, learned senior counsel appearing for the respondent-CBI, on the other hand, submitted that the trial court and the High Court have dealt with the issue of extra-judicial confession being legally maintainable. The prosecution has also been able to prove that the same was without any inducement, threat or promise which factor the appellant has not been able to discard from any of the witness. The prosecution has been able to prove the motive to commit such a crime. Similarly, the recovery of knife, CFSL report and post mortem report clearly indicate that the injuries were from a single blade weapon. Even though there is no eye-witness to the actual crime, yet the prosecution has been able to bring home the guilt of the accused under Section 302 IPC by proving the complete chain of circumstances beyond reasonable doubt. The appellant neither in cross-examination of various witnesses nor in any explanation in his statement

under Section 313 Cr.P.C. has been able to make a dent in the entire evidence. The counsel submitted that even in a case of circumstantial evidence, the evidence has to be appreciated as a whole and not in pieces, one bit here and one bit there.

8. We have considered the arguments advanced by the counsel on either side and have also gone through the findings recorded by the trial court as also by the High Court.

9. Admittedly, the entire case is based on the circumstantial evidence as no one has seen the murder having been committed by the accused-appellant. Although the trial court has not given much weightage to the confession alleged to have been made by the accused-appellant before PW-5, PW-6 and PW-20, but the High Court based the conviction on the basis of extra-judicial confession also. The trial court while dealing with the confession alleged to have been made by the accused, observed as under:

> "52. Now in the present case the prosecution is relying on the confession of the accused before Kalyan Singh (PW-6), the repetition confession before Sh. R.K. Ambady (PW-5) and the confession allegedly made by the accused before Inspector Wai (PW-20).
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> 53. So far as the confession before R.K. Ambady (PW-5) is concerned, I am not inclined to accept the same. PW-5 claims to have gone on the bridge. The accused had confessed before him that he had killed Shiva Raman and will kill the other persons whosoever comes before him (Hum Shivaraman Ko Khalash Kiya Aur Koi Ayega To Usko Bhi Khalash Karenga) However, this particular claim of PW-5 is conspicuous by its absence from the official logbook entry Ex.PW5/D which had been made on 2.12.96. However, there is no reference of this particular confession i.e. before PW-5.
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> 54. So far as the confession before Inspector Wai (PW 20) is concerned, the same cannot be looked into in view of the law laid down in State vs. Ranjan Raja Ram 1991 (1) CCC 134. This particular judgment has been relied on by counsel for the accused and it had been argued that since the facts of the present case were identical, therefore, the accused in the present case deserves acquittal. I have carefully gone through the judgment State vs. Ranjan Raja Ram (supra). In that case the extra judicial confession was made before a person who had just joined the ship on 2.6.78 and the occurrence had taken place on 9th/10th June 1978. He was a stranger to the accused. It was the prosecution case (in that case) the accused had kept on

telling his having committed the murder to every one. It was not believed by the court. In para 26 of the judgment it was mentioned that the name of PW in that case had come for the first time on 15.7.78. Therefore, that case is distinguishable so far as confession made by the present accused before Sh. Kalyan Singh (PW6) is concerned. What is a confession? What is the law on the subject? Whether conviction can be based on extra judicial confession?"

10. On the contentions of the accused-appellant, the High Court while dismissing the appeal of the accused by the impugned judgment held as under:

> "13. ……. One cannot lose sight of the fact that according to Kalyan Singh (Pw-6), on reaching the bridge of the ship, the appellant had first told him that he had killed Shivraman and then repeated the same in Hindi also by uttering, ?KHALAS KAR DIYA?. The statement so made in Hindi was only in continuation to the confession initially made by him wherein he had specifically named Shivraman. Thus, the words ?KHALAS KAR DIYA? Uttered by the appellant in Hindi are to be read in the context of his initial confession naming Shivraman. No real variance in the content of confession initially made and the one repeated in Hindi is thus brought out.
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> 15. …. The omission to mention the exact words in the log book entry dated 2.12.1996 vide Ex. PW-5/D in the circumstances cannot make the testimony of Kalyan Singh (PW-6) in regard to confession by the appellant uncreditworthy. The log book entry (Ex.PW-5/D) does carry a mention that the information regarding commission of the murder of Shivraman by the appellant was given over phone by Shri Kalyan Singh (PW-6) from which it is evident that Shri Kalyan Singh (PW-6) had, before passing on the information to the said effect, come to know that it was the appellant who had committed the crime. …… The presence of the appellant at the bridge near Kalyan Singh (PW-6) before Shri Radha Krishan Ambady (PW-5) and Murlidharan (PW-20) reached there and handing over of bloodstained knife collected from the appellant by Kalyan Singh (PW-6) lend sufficient corroboration to the appellant having approached Kalyan Singh (PW-6) at the bridge and making confessional statement to him, as deposed by Shri Kalyan Sijngh (PW- 6). The stand of the appellant that Shri Kalyan Singh (PW-6) had joined hands with Shri Radha Krishan Ambady (PW-5) and others on board being inimical to him is difficult to accept, given the nature of friendly relationship he enjoyed with Kalyan Singh (PW- 6). The learned

trial court would, thus, appear to have committed no error in reaching the conclusion that the extra judicial confession made by the appellant, as deposed in the court, was voluntary and a truthful one and could, thus, constitute an incriminating piece of evidence to find his culpability in the commission of the crime.

16. Non-examination of two seamen, namely, Baria and Thalgharkar, who were manually steering the ship at the relevant time when the appellant made his confessional statement before Kalyan Singh (PW-6) cannot be a ground to discard an otherwise unimpeached testimony of Kalyan Singh (PW-6) in regard to confession made to him by the appellant. Acceptance of testimony of a particular witness in regard to an extra judicial confession is not dependent on corroboration by other witnesses, if otherwise creditworthy. …… The appellant and Talgharkar thus shared a comradely bond and in such a situation looking for a support from Talgharkar to PW Kalyan Singh's deposition on extra judicial confession by the appellant would be expecting too much from him.

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20. ….. Since the clothes which the appellant was wearing at the relevant time were not taken into possession to prove the existence of bloodstains, if any, thereon and as none of the witnesses testifies about presence of bloodstains on his clothes, the conclusion that follows is that there were no bloodstains on his clothes when the appellant approached Kalyan Singh (PW-6) at the bridge to confess his guilty. This fact could have been of considerable significance in adjudging the culpability of the appellant had the effect of the same been not offset by the strong incriminating evidence which constitute the basis for convicting the appellant. … The clothes of the appellant, as noticed earlier, were not soaked in deceased's blood nor there is any evidence of his feet or footwear, if any, the appellant was wearing, having got smeared in deceased's blood before his proceeding to the bridge and in such circumstances, no blood could be expected to have fallen down in the alleyway from the scene of the crime to the bridge.

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23. Apart from the bloodstained knife Ex.P.3 and certain other items, as mentioned in the letter (Ex. PW-21/2) of the investigating officer, one sealed cardboard parcel 'containing a blue coloured soaked boiler suit' worn by

deceased at the time of incident marked as ‘B’ was also sent to CFSL for examination and opinion. Such sealed cardboard box was, on opening, found to contain two Exhibits 2a and 2b vide CFSL report Ex.PW-22/1. Ex.2a was the dark blue coloured boiler suit and Ex.2b was a metallic blade fitted in a wooden handle like a knife. The length of the metallic blade is about 5.5 centimeters with one edge sharp and another blunt having a round tip at one end. None of the prosecution witnesses, including the investigating officer, stated anything as to how and wherefrom the said knife Ex.2b was recovered and kept with the boiler suit in the same cardboard box. This knife Ex.2b, like knife Ex.P-3, also bore human bloodstains matching ‘O’ group of the deceased. Existence of knife Ex.2b was made a basis, by learned counsel for the appellant, to argue that the same could have been used to cause stab wounds on the neck and chest of the deceased, as noted in the postmortem report (Ex.PW- 19/A). Countering the argument related to nature of weapon of offence used in commission of the crime, as raised by the learned counsel for the appellant, learned counsel for CBI contended that even though the prosecution witnesses kept silent as to how the knife Ex.2b came to be sealed in the cardboard box containing the boiler suit (Ex.2a), in view of sufficient evidence on record proving beyond doubt commission of the crime by the appellant with the knife Ex.P-3, there is no real basis to support the contention that knife Ex.2b could also be a possible weapon of offence.

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25. The theory of more than one weapon being used in the commission of the crime, as propounded by learned counsel for the appellant, as noticed earlier, emanates from the nature of certain injuries on the body of the deceased and existence of knife Ex.2b with bloodstains thereon matching the blood group of the deceased. Learned counsel for the appellant contended that unlike knife Ex.P- 3 the knife Ex.2b was not subjected to examination to find the presence of finger prints, if any, on its handle. The same was also not shown to Dr. Lal Sai Chak (PW-19), who conducted the postmortem examination on the body of the deceased to seek his opinion if the same could have been the possible weapon of offence, nor the opinion of the expert witness Shri C.K. Jain (PW-22) was sought in respect thereto if the cuts on the boiler suit could have been caused by that knife.

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> 28. Keeping in view the incriminating evidence available on record proving the guilt of the appellant beyond reasonable doubt, we find no reason to arrive at a finding different from the one recorded by the learned trial court in regard to the complicity of the appellant in committing the murder of L. Shivaraman on board. Hence, the impugned conviction and sentence are maintained and the appeal is dismissed being bereft of merit."

11. Now, we have to consider whether the judgment of conviction passed by the trial court and affirmed by the High court can be sustained in law. As noticed above, the conviction is based on circumstantial evidence as no one has seen the accused committing murder of the deceased. While dealing with the said conviction based on circumstantial evidence, the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. the guilt of the accused, which would mean that the onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the Court.

12. In the case of Hanumant Govind Nargundkar vs. State of M.P., AIR 1952 SC 343, this Court observed as under:

> "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 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 show that within all human probability the act must have been done by the accused. …."

13. In the case of Padala Veera Reddy vs. State of A.P., 1989 Supp (2) SCC 706, this Court opined as under:

> "10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a

series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

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

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

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

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.(See Gambhir v. State of Maharashtra, (1982) 2 SCC 351)"

14. In the case of C. Chenga Reddy & Ors. vs. State of A.P., (1996) 10 SCC 193, this Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

15. In the case of Ramreddy Rajesh Khanna Reddy vs. State of A.P., (2006) 10 SCC 172, this Court again considered the case of conviction based on circumstantial evidence and held as under:

"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the

> circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67 and Reddy Sampath Kumar v. State of A.P., (2005) 7 SCC 603)."

16. In the case of Sattatiya vs. State of Maharashtra, (2008) 3 SCC 210, this Court held as under:

> "10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances."
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> This Court further observed in the aforesaid decision that: "17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court—Bharat v. State of M.P., (2003) 3 SCC 106. In the light of the above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime."

17. In the case of State of Goa vs. Pandurang Mohite, (2008) 16 SCC 714, this Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond

reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

18. It would be appropriate to consider some of the recent decisions of this Court in cases where conviction was based on the circumstantial evidence. In the case of G. Parshwanath vs. State of Karnataka, (2010) 8 SCC 593, this Court elaborately dealt with the subject and held as under:

> "23. In cases where 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. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.
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> 24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. 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, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

19. In the case of Rajendra Pralhadrao Wasnik vs. State of Maharashtra, (2012) 4 SCC 37, while dealing with the case based on circumstantial evidence, this Court observed as under:

> "12. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only possibility is that the accused has committed the crime.
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> 13. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person."

20. Last but not least, in the case of Brajendrasingh vs. State of M.P., (2012) 4 SCC 289, this Court while reiterating the above principles further added that:

> "28. Furthermore, the rule which needs to be observed by the court while dealing with the cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent till proven guilty and that the accused is entitled

to a just and fair trial. (Ref. Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220; Shivu v. High Court of Karnataka, (2007) 4 SCC 713 and Shivaji v. State of Maharashtra, (2008) 15 SCC 269)"

21. As discussed hereinabove, there is no dispute with regard to the legal proposition that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence as laid down by this Court. In such a case, all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else.

22. From the prosecution side, a number of witnesses have been examined to complete the chain of events and to prove the version given in the FIR and subsequent thereto. We have re-appreciated and analysed the evidence brought on record from the prosecution side. On the analysis of the evidence, we have found many inconsistencies and infirmities in the prosecution version as mentioned hereinafter.

23. Admittedly, there is no eye witness in this case despite the fact that the occurrence took place in the cargo ship and obviously some of the crew members were living and/or on duty around the ship. Both the accused and the deceased were good friends and both were staying in one cabin viz. Cabin No.25. Before the occurrence, the accused was shifted to Cabin No.23. Admittedly, therefore both the accused and the deceased were staying in separate cabin on the date of occurrence.

24. The accused-appellant and the deceased were helmsmen on the ship which was sailing from South Africa to Japan via Singapore. Since the auto-pilot went out of order and could not be repaired, the crew members were directed to manually steer the ship. The accused and one Talghakar showed reluctance to steer the ship manually and insisted for repair of the auto-pilot and payment of their long overdue overtime. The prosecution case is that the accused and the said Talghakar instigated other crew members to insist and obtain it in writing from the Captain (PW-5) that the ship would be got repaired at Japan otherwise they (crew members) shall not allow moving of the ship from Singapore.

25. The prosecution case is that the accused is alleged to have confessed before PW-6 about the commission of the offence and the blood- stained knife was handed over to PW-6 which was subsequently seized but no blood was noticeable on the clothes of the appellant which were found at the relevant time. The other helmsmen, namely, Baria and Talghakar who were present when the appellant is

alleged to have made confession before PW-6, were not examined by the prosecution.

26. The knife (Ex.P-3) was not shown to the doctor concerned who had conducted post mortem examination on the dead body of the deceased to find out whether the injuries could have been caused by that weapon. Surprisingly, another knife (Ex.2b) alleged to have been recovered from the boiler suit was also not shown to the doctor to ascertain whether the said knife was also used in the commission of the offence.

27. From the evidence, it reveals that after the said incident the appellant was tied up and kept on the bridge for at least 2 to 3 days before being shifted. The contention of the appellant's counsel was that the appellant was susceptible of being forced to hold the knife (Ex.P-3) so as to get his fingerprints on the knife which was never kept inside the fish room along with the dead body.

28. Apart from the aforesaid, it appears from the post mortem report that there were about 14 stab wounds on the neck but there was no blood found on the dress of the appellant or on the scene of occurrence. Though the deceased was alleged to have been assaulted as many as 14 times by a sharp-edged weapon and there was massive blood at the site of the offence, no blood had spilled on the appellant or his clothes. Moreover, there is nothing on record by way of explanation from the prosecution side as to why the clothes of the appellant were not seized. Further, the alleged knife (Ex.P-3) was not shown to the doctor who conducted the post mortem of the deceased in Honkong to take his opinion as to whether it was Ex.P-3 alone which could have caused those injuries especially when another knife was found from the boiler suit.

29. A very relevant piece of evidence which has been noticed by the High Court, but not given due consideration, is that apart from the blood- stained knife (Ex. P-3) and certain other items mentioned in the letter of Investigating Officer, one sealed cardboard parcel containing blue soaked boiler suit worn by the deceased at the time of incident was also sent to CFSL for examination and opinion. In the said sealed cardboard box, two Exhibits (2a and 2b) were found. Ex.2a was the dark blue coloured boiler suit and the Ex.2b was metallic blade fitted in a wooden handle like a knife. The length of the metallic blade is about 5.5 centimeter with one edge sharp and another blunt having a round tip at one end. None of the prosecution witnesses including the Investigating Officer, stated anything as to how and wherefrom the said knife (Ex.2b) was recovered and kept with the boiler suit in the same cardboard box. This knife (Ex.2b) also bore human blood-stained

matching ‘O’ group of the deceased. As per the post mortem report, stab wounds on the neck and chest of the deceased might be by the use of the said weapon Ex.2b. The said knife (Ex.2b) was not subjected to examination to find out the presence of fingerprints, if any, of the appellant. The said knife (Ex.2b) was also not shown to the doctor (PW-19) who conducted the post mortem examination on the body of the deceased, to seek his opinion if the same could have been possible weapon of offence. Even the opinion of the expert witness (PW-22) was not sought as to whether the cuts on the boiler suit could have been caused by that knife.

30. One more important aspect which has not been taken note of by the trial court and the High Court is that as per the prosecution case, the appellant was the trouble maker and instigated other crew members not to steer the ship manually unless the officers give it in writing about fulfillment of their demand of payment of long overdue overtime. This vital piece of evidence regarding the enmity of the appellant with the higher officials and others has been suppressed: instead, the prosecution tried to show that there was no enmity towards the appellant.

31. Admittedly, after the alleged incident, the Master of the ship got the scene of offence cleaned like a vision and nothing was kept intact in and around the cabin where the offence was committed. Even the Investigating Officer failed to inspect the cabin. No site plan was prepared by the Investigating Officer. Before the arrival of the Investigating Agency officials, the place of occurrence including cabin was completely washed and cleaned in such a way as if nothing had happened in the cabin and the place around it.

32. On consideration of all these relevant facts and vital piece of evidence, it can safely be concluded that the offence committed by the appellant has not been fully established beyond all reasonable doubts. The very fact that two blood-stained knives were found by the prosecution proves that the prosecution failed to give sufficient explanation as to who had assaulted the deceased by using another knife (Ex.2b). The High Court has committed grave error in holding that in view of the findings arrived at by the trial court that offence was committed by using the knife (Ex.P-3), the presence of another knife (Ex.2b) with blood-stains will not demolish the case of the prosecution. In our view, from the circumstances the conclusion of the guilt of the appellant herein has not been fully established beyond all shadow of doubt as the circumstances are not conclusive in nature -- neither the chain of events is complete nor the circumstances lead to the conclusion that the offence was committed by the appellant and none else. Hence, the impugned judgment of the High Court affirming the judgment of conviction passed by the trial court cannot be sustained in law.

33. For the reasons aforestated, this appeal deserves to be allowed and the impugned judgment is liable to be set aside. This appeal is, accordingly, allowed and the judgments of the High Court and the trial court are set aside. The appellant is directed to be released forthwith if not required in any other case.