(2024) 11 GUJ CK 0017

Gujarat High Court

Case No: Criminal Appeal (Against Conviction) No. 962 of 2014

Dinesh @ Guddu Gopiram Sakhvar		APPELLANT
	Vs	
Vs State of Gujarat		RESPONDENT

Date of Decision: Nov. 26, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 162, 164, 174, 207, 209, 313, 374(2)
- Indian Penal Code, 1860 - Section 302
- Indian Evidence Act, 1872 - Section 17, 24, 25, 26, 31

Hon'ble Judges: Ilesh J. Vora, J; S.V. Pinto, J

Bench: Division Bench

Advocate: N K Majmudar, Monali Bhatt

Final Decision: Allowed

Judgement

S.V. Pinto, J

1. This appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure against the judgement and order of conviction

dated 10.03.2014 passed by the learned 3rd Additional Sessions Judge, Surat (hereinafter referred to as the â€œlearned Trial Courtâ€) in Sessions

Case No. 249 of 2012. The appellant was put on trial for the offence punishable under Section 302 of the Indian Penal Code and was convicted and

sentenced to life imprisonment (rigorous imprisonment) and fine of Rs 10,000/- (Rs. Ten Thousand only) and in default, to simple imprisonment for

three years for the offence under Sections 302 of the IPC.

The appellant is referred to as the accused as he stood in the original case for the sake of convenience, clarity and brevity.

2. FACTUAL MATRIX

2.1 From the evidence on record it appears that the deceased Rachna was married to Rakeshsinh Nahneram Prajapati and they were residing in Surat

along with Veerusinh Nahneram Prajapati - the brother of Rakeshsinh, Santosh - the brother of the deceased and their friend Dinesh @ Guddu (the

accused). The incident occurred on 27.03.2012 and at that time, Rakeshsinh - the husband of the deceased and her brother Santosh had gone for night

duty as they were working in an Embroidery Factory at Surat. Veerusinh and the accused were working on day duty and early in the morning at 5.00

am, Veerusinh and the accused came to the workplace of Rakeshsinh and Santosh, and told them that Rachana has expired. They went home and

found her lying on the floor and they called the police and Accident Death No. 37 of 2012 under Section 174 of the Code of Criminal Procedure was

registered which was investigated by R. S. Gamit â€" Police Sub Inspector and during investigation it was found that on 26.03.2012 at around 12.00

midnight, the accused came home drunk and the deceased Rachna told him not to come home drunk and gave him a slap and the accused slapped her

three - four times and strangulated her with the clothesline used for drying clothes and as the offence under Section 302 of the IPC was made out, the

complaint of the complainant - Dilipsinh Nahneram Prajapati was recorded which was registered at Varachha Police Station being I - C.R. No. 96 of

2012 under Section 302 of the IPC.

2.2 The Investigating Officer collected the necessary evidence, drew the panchnamas including the Inquest Panchnama and sent the dead body of the

deceased for postmortem. The statements of the connected witnesses were recorded and as the involvement of the accused was found in the

offence, the accused was arrested and after the FSL reports were received, a charge sheet came to be filed before the Court of the Judicial

Magistrate First Class, Surat and as the case was exclusively triable by the Sessions Court, Surat, a committal order was passed by the learned

Judicial Magistrate, First Class under Section 209 of the Code of Criminal Procedure and the case was registered as Sessions Case No. 249 of 2012.

2.3 The accused was produced before the learned Trial Court and it was verified whether the procedure under Section 207 of the Code of Criminal

Procedure was followed and a charge was framed against the accused at Exh. 4 and the statement of the accused was recorded at Exh. 5. The

accused denied all the contents of the charge and the prosecution examined 15 witnesses and produced 16 documentary evidences in support of their

case. After the learned APP filed the closing pursis at Exh. 41, the further statement of the accused under Section 313 of the Code of Criminal

Procedure was recorded, wherein, the accused denied all the evidences of the prosecution and refused to step into the witness box or examine

witnesses and stated that he was innocent and he has not committed any offence. The learned Trial Court heard the arguments of the learned APP

and the learned advocate for the accused and by the impugned judgement and order, was pleased to find the accused guilty and sentenced the

accused to life imprisonment and fine of ₹10,000/- and in default, to simple imprisonment for three years.

3. Being aggrieved and dissatisfied with the judgement and order of conviction, the appellant has filed the present appeal mainly stating that the

learned Trial Court has committed a substantial error in appreciating the evidence and has failed to appreciate that the prosecution has not proved the

case beyond reasonable doubts. The learned Trial Court has failed to appreciate that the ligature marks that were found on the neck of the deceased

would be available on the body if a person would commit suicide by hanging. The panch witnesses do not support the case of the prosecution and have

turned hostile and even the neighbour of the deceased has not supported the case of the prosecution. In fact, the neighbour of the deceased has stated

that she had no doubts about the relationship of the appellant with the deceased. From her deposition, there is no evidence that the appellant and the

deceased were involved in any relationship and there is no evidence that the appellant is involved in the commission of the offence. That there are no

eye witnesses to the incident, but the same is not appreciated properly by the learned Trial Court. Witness Veerusinh Prajapati has stated that the

appellant had informed him early in the morning at around 4:30 AM on his mobile phone that the deceased was found dead hanging from the fan and

the appellant had told him that when he went to answer naturesâ€™ call, he saw the deceased in such a situation and he took the body down. The

learned Trial Court has not appreciated that this evidence does not implicate the involvement of the appellant in the offence. The motive, as per the

case of the prosecution is that the appellant had come to the room in a drunken condition and the deceased had given him two slaps and told him not to

come in a drunken condition to the room and for this reason, the applicant was angry and has committed the offence but there is no evidence to

corroborate the say of the prosecution to this effect. That no motive is established and there is no person who has seen the appellant with the

deceased on the date of the incident and the prosecution has not proved the case beyond reasonable doubts, and hence the impugned judgement and

order must be quashed and set aside.

4. Heard learned advocate Mr. Rohan N. Majmudar for the appellant and learned APP Ms. Monali Bhatt for the respondent State. We have minutely

perused the impugned judgment and order and the entire evidence produced by the prosecution on record of the case.

5. SUBMISSIONS ON BEHALF OF THE APPELLANT

5.1 Mr. Rohan Majmudar for the appellant herein has submitted that there is no iota of evidence in the evidence of the prosecution that the appellant

was present at the time of the incident and the motive, as stated by the prosecution, has not been proved beyond reasonable doubts. The prosecution

has tried to develop a case that the deceased and the appellant were in a relationship and a neighbour had seen them arguing with each other and on

the day of the incident, the appellant came home drunk and the deceased told him not to come home drunk and they had a verbal altercation and the

deceased slapped the appellant and he got angry and slapped her back and took the clothesline which was used to hang clothes and strangulated her

but there is no evidence on record to show that there was any kind of relationship between the deceased and the appellant and there is no iota of

evidence that the appellant was present in the house at the time of the incident. All the near relatives of the deceased such as the husband, brother,

brother-in-law, father, mother and father-in-law have been examined but none of them have stated anything about any relationship between the

deceased and the appellant and hence, the case of the prosecution about the motive has not been established. The prosecution has also tried to build

up a case that the appellant had made an extra judicial confession before all the witnesses but none of the witnesses have stated anything about the

extra-judicial confession and in fact some of the witnesses state that the appellant was beaten up by the police and this shows that appellant has been

falsely implicated in the offence. The case against the appellant is based on circumstantial evidence but the chain of circumstances have not been

properly established by the prosecution in the evidence and in fact, Accident Death No. 37 of 2012 which was registered under Section 174 of the

Code of Criminal Procedure was investigated by R. S. Gamit â€" Police Sub Inspector but he has not been examined before the learned Trial Court

and the documents of investigation in the Accident Death case have not been produced on record by the prosecution and how the involvement of the

appellant in the offence has come on record is not proved. That the learned Trial Court has not appreciated the evidence in proper perspective and the

case against the appellant is not proved and the appellant must be acquitted for the offence.

6. SUBMISSIONS ON BEHALF OF THE RESPONDENT STATE

6.1 Learned APP Ms. Monali Bhatt has taken this court through the entire evidence of the prosecution on record and has submitted that the learned

Trial Court has appreciated each and every evidence on record and there are no eye witnesses to the incident but it is proved on record that the

deceased and the appellant were residing in the same house and the appellant was having day duty and was at home at the time of the incident. That

the appellant was the first person who told witness Veerusinh about the death of the deceased and he had stated that the deceased was hanging from

the fan but there is no evidence to this effect in the panchnama of the place of offence. The deceased was strangulated with the clothesline that was

used to hang clothes and the clothesline was discovered at the instance of the appellant in the discovery panchnama by the Investigating Officer and

the clothesline was sent to the FSL and traces of blood of the deceased was found on the clothesline which proves that the same clothesline was used

to strangulate the deceased. That the circumstantial evidence points towards the involvement of the appellant in the offence and the same is clearly

proved by the prosecution. Learned APP has urged this Court to reject the appeal of the appellant.

7. Before we proceed to decide the appeal on merits, it would be appropriate to refer to the evidence led by the prosecution on record of the case.

EVIDENCE OF THE PROSECUTION

7.1 PW-1 â€" Dr. Vijaykaushik Darogi Chaudhary is the Medical Officer who has performed the post-mortem on the body of deceased - Rachnaben

Rakeshbhai Prajapati and he has stated that on 27.03.2012 at around 4:10 PM, the identified body was brought for postmortem and he and his

colleague Panel Doctor Dr. Pranav Prajapati had performed the postmortem between 4:15 PM and 5:25 PM. There were marks of ant bite near the

right palm, left palm, both legs and over some parts of the body and as per column no. 17, the following injuries were found on the body.

1. A reddish brown colour ligature mark on the right side of the neck.

2. Internal injuries were corresponding to the external injuries on the body. The injuries were antemortem in nature and the cause of death

was asphyxiation due to strangulation.

7.2 PW-8 - Parvatiben Chunilal Shah is the neighbour of the deceased. She has stated that the deceased was her neighbour and residing with her

husband Rakesh, his brother and the accused and they would work in the night shift for eight days and in the day shift for eight days and she had no

doubt about the relationship between the deceased and the accused.

7.3 PW-9 - Dilipbhai Nathilal Prajapati is the father of the deceased and he has stated that on 23.03.2012, he was at his village Porsa, District Morena

in Madhya Pradesh and he received a telephone call and he immediately rushed to Surat and went to SMIMER Hospital and found that his daughter

Rachna had expired as she was strangulated. His son in law - Rakeshsinh, his son - Santosh, his son in lawâ€™s brother Veerusinh and his friend

Dinesh @ Guddu were present in the police station, and the police had questioned them and at that time, Guddu had stated that two to three days prior

to the incident, he was intoxicated and his daughter had told him not to come intoxicated to the room and had slapped him and as he got angry, he had

strangulated her. The witness filed the complaint which is produced at Exh. 27. During the cross-examination by the learned advocate for the accused,

the witness has stated that the police had beaten the accused.

7.4 PW-10 - Santosh Dilipbhai is the brother of the deceased and he has stated that he was residing in a rented house at Surat with his sister Rachna

and her husband - Rakeshsinh Prajapati, his brother in law - Veerusinh and friend Dinesh @ Guddu. On the day of the incident, he had gone to work

along with his brother-in-law and at 5.00 AM. Veeru and Dinesh @ Guddu came to their place of work and informed them that Rachna had expired

and they immediately came to the room and found his sister lying on the floor. He saw injuries over the hand and neck of his sister and his brother-in-

law had telephoned the police. The police had informed him that Guddu had killed his sister.

7.5 PW-11 - Veeru Nahneram Prajapati is the brother of the husband of the deceased Rachnaben and he has stated that he was residing along with

his brother, Rakesh, Santosh and Dinesh @ Guddu and on the day of the incident, he and Dinesh had day duty and Rakesh and Santosh had night

duty. Early in the morning at around 4:30 AM, Dinesh called him on his mobile and Sandip had received the call and Dinesh had immediately called

him to the room and when he went to the room, Dinesh was present and informed him that he was sleeping on the terrace and when he came down to

the washroom, he saw Rachna hanging on the fan. That he took her down and at that time, Rachna had expired and she was lying dead on the mat on

the floor. That he called Rakesh but he did not pick up the phone and they went and informed Rakesh and the dead body was sent for post-mortem.

Rakesh and Santosh and other relatives questioned Dinesh and he told them that Rachna had hung herself and he had taken her body down from the

fan.

7.6 PW-12 - Rakesh Nahneram Prajapati is the husband of the deceased and he has stated that he had gone for work and on 27.03.2012 around 5.00

AM, his brother Veeru and Dinesh came to his place and informed them that Rachna was no more and they all came to the room and found

strangulation mark on the neck of Rachana and marks of injury on the right hand from the wrist to the palm. He had informed Rachnaâ€™s parents

on the phone and Dinesh was questioned by his parents in laws and other relatives and he had confessed that he had come intoxicated to the room

around midnight and at that time, Rachna had slapped him and he got angry and took the clothesline which was lying in the room and strangulated her

and killed her. During the cross-examination, the witness has stated that the police had arrested Dinesh and while Dinesh had confessed to the

offence, the police was present.

7.7 PW-13 - Nahneram Durgaprasad Prajapati and PW-14 - Ramsati Dilipsinh Prajapati are the father in law and mother of the deceased Rachnaben

and they were in their village in Madhya Pradesh and had rushed to Surat on being informed about the incident.

7.8 PW-15 - Rameshbhai Somabhai Prajapati is the Investigating Officer and he has stated that Accident Death No. 37 of 2012 under Section 174 of

the Code of Criminal Procedure was being investigated by PSI R. S. Gamit and during investigation, the offence of murder was detected and the

offence was registered at Varachha Police Station I C. R. No. 96 of 2012 under Section 302 of the IPC. He had recorded the statements of the

connected witnesses and had arrested the accused and on questioning the accused, had voluntarily agreed to show the clothesline used in the incident

and the panchnama was prepared and the thread was recovered. The muddamal was seized and sent for analysis to the FSL and the necessary

panchnamas were drawn and thereafter, he had filed the charge-sheet.

8. It is not in doubt that the case against the accused is based on circumstantial evidence and there are no eye witnesses to the incident. It is on record

and proved that the accused was residing in the same house along with the deceased and others and it was the accused who was the first person to

inform Veerusinh - the brother-in-law of the deceased about her death. The clothesline with which the death of the deceased has occurred was found

in the same house where the accused and the deceased resided and the recovery of the clothesline was by the recovery panchnama after the arrest

of the accused. As per the case of the prosecution, the accused had confessed to committing the offence in the presence of some of the family

members of the deceased but there is no clear, convincing and cogent evidence regarding this extra judicial confession and the same cannot be relied

upon as some of the family members have stated that the police had taken the accused and he was beaten up by the police and at the time of the

confession by the accused, the police was present. Hence, the two issues to be decided at this juncture would be whether the extra judicial confession

of the accused that is made in the presence of a police officer can be used against him as evidence and whether the chain of circumstances in this

case are complete and consistent with the guilt of the accused to come to a conclusion that it was only the accused who has committed the offence.

9. The Apex Court in Aghnoo Nagesia V. State Of Bihar reported in AIR 1966 Supreme Court 119 has made the following observations which are

relevant and quoted below:-

â€œSection 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to

confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1973.

Sections 17 to 31 of the Evidence Act are to be found under the heading ""Admissions"". Confession is a species of admission, and is dealt

with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision

of law. Section 24 excludes confession caused by certain inducements, threats and promises. Section 25 provides: ""No confession made to a

police officer shall be proved as against a person accused of an offence"". The terms of S. 25 are imperative. A confession made to a police

officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in

police custody as also a confession made before any investigation has begun. The expression ""accused of any offence"" covers a person

accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof

against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a

Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not

qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso and partially lifts

the ban imposed by Ss. 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of information received

from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or

not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of

any statement made by any person to a police officer in the course of an investigation for any purpose at any inquiry or trial in respect of

the offence under investigation, save as mentioned in the proviso and in cases falling under sub-section (2), and it specifically provides that

nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide enough to include a

confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may

be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except

as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence

Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to

any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a

Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while

he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds

of public policy and the fullest effect should be given to them.â€

10. As far as circumstantial evidence is concerned, the Apex Court in Sharad Birdi Chand V. State of Maharashtra reported in 1984 SCC (4) 116 has

observed as under:

â€œâ€¦â€¦â€¦.It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of

the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a

chain are in themselves complete than a false plea or a false defence may be called into aid only to lend assurance to the Court. In other

words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It

is not the law that where is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea

which is not accepted by a Court.â€

Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required

in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. The State of

Madhya Pradesh.

(1) This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of Tufail

(Alias) Simmi v. State of Uttar Pradesh and Ramgopal v. State of Maharashtra. It may be useful to extract what Mahajan, J. has laid down in

Hanumant's case (supra):

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 far 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.

A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully

established:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated 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' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra where the following

observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental

distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) 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,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

11. We have minutely perused the evidence in this case and find that from the evidence the prosecution has proved that the accused and the deceased

were residing in the same house and the deceased Rachnaben, her husband Rakeshsinh, brother in law Veerusinh, brother Santosh and the accused

were all residing in the same house. The prosecution has also proved that the accused was the first one to know that Rachna had expired and he had

called Veerusinh and called him to the room and when Veerusinh came to the room, he saw Rachna lying on the floor. On the day of the incident,

Rakeshsinh and Santosh were on night duty and not at home and Veerusinh and the accused came to their place of work to inform them that Rachna

had expired and they came to the room and found Rachna lying on the floor. Accidental Death Case No. 37 of 2012 was registered which was

investigated by PSI R. S. Gamit who has not been examined before the learned Trial Court and hence, the prosecution has not proved how the

involvement of the accused in the offence was traced. The witnesses have stated that the accused was taken to the police station and he was beaten

up and he had confessed to committing offence in the presence of the police. Moreover, it is the case of the prosecution that the clothesline that was

used to strangulate, the deceased was recovered at the instance of the accused from the same room where the deceased was lying and that is the

only circumstance used to convict the accused.

12. We have perused the evidence and find that the panch witnesses of the recovery panchnama have not supported the case of the prosecution and

the Investigating Officer has not narrated in detail about how the clothesline that was used to strangulate the deceased was was recovered. In

Ramanand @ Nandlal Bharti Vs State of Uttar Pradesh reported in 2022 AIR SC 5273, the Apex Court has in para 56 held as under :

56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the

panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the

investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the

prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we

have noticed from the oral evidence of the investigating officer, PW-7 - Yogendra Singh is that he has not proved the contents of the

discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence, the

same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are

convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery

panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the

investigation, more particularly, when the independent panch witnesses though examined, yet have not said a word about such discovery or

turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating

officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and for this purpose

the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of

weapon of offence was drawn as the accused was willing to take it out from a particular place.â€

In this case the Investigating Officer has merely stated that while questioning the accused, the accused volunteered to show the clothesline which was

seized as per the panchnama and the Investigating Officer has not deposed in detail and that is not sufficient to prove the contents of the panchnama.

13. As far as circumstances are concerned, the case of the prosecution rests on the sole recovery of the clothesline by which the deceased was

strangulated which was found in the room where the body of deceased Rachna was found. The clothesline was sent for analysis to the FSL and the

blood marks of the blood group of the deceased were found on the clothesline but no presence of skin was found on the clothesline. As per the

recovery panchnama, the clothesline was found hanging in the room on the window on the south wall, which was used to hang clothes and the end tied

to the window, the clothesline measured 8â€˜14 cm was found hanging from the cement grill on the window and the whole clothesline measured 17

feet. In the entire evidence, there is no evidence regarding the presence of the accused at the place of incident, at the time of the incident and the only

evidence is the recovery of the clothesline with blood stains of the group of the deceased. The prosecution has proved that the deceased and the

accused along with others were residing at the place of offence but at the time of the offence, the presence of the accused is not clearly established.

The entire case of the prosecution rests on the extra judicial confession made by the accused but there is evidence that the accused was taken to the

police station and he was beaten and as per the decision of the Apex Court in Aghnoo Nagesia (supra), whatever confession was made was in the

presence of the police cannot be used against the accused. Moreover, the circumstances from which the guilt of the accused is sought to be drawn

and not fully established and the circumstances are not conclusive and the chain of evidence is not complete so as to leave any reasonable ground to

conclude that in all probability, the act has been committed only by the accused. In order to sustain a conviction of an accused in a serious offence like

Section 302 of the IPC based on circumstantial evidence, the prosecution has to satisfy the tests/conditions as laid down by the Apex Court in Sharad

Birdhi Chand Sarda (supra) and the chain of events is not complete in this case.

14. Moreover when the case is based on circumstantial evidence, the motive is an extremely crucial link to be established by the prosecution and as

far as the motive is concerned, the prosecution has not even remotely established the motive of the accused for committing the offence. The

prosecution has attempted to bring on record the relationship of the accused with the deceased but the neighbour PW-8 - Parvatiben Chunilal Shah

has categorically stated that she had no doubt about the relationship between the accused and the deceased and none of the relatives of the deceased

have breathed a word about any relationship between the deceased and the accused.

15. As discussed above, the extra judicial confession cannot be used against the accused and there is no sufficient evidence of the presence of the

accused at the place of offence at the time of the incident. The motive is not proved and the circumstances do not definitely point to the guilt of the

accused and are not cogently established. The circumstances do not form a chain so complete to conclude that it was only and only the accused and

no other who had committed the offence and the chain of events leading to the commission of the offence are absolutely missing in this case.

16. Consequently, the appeal succeeds and is allowed. The impugned judgement and order of conviction dated 10.03.2014 passed by the learned 3rd

Additional Sessions Judge, Surat in Sessions Case No. 249 of 2012 is hereby quashed and set aside. The appellant is ordered to be released forthwith

if not required in any other case.

17. Fine to be refunded after due verification. Record and Proceedings be sent back to the Trial Court forthwith.