

Smt. Guddo @ Sonia Vs State
 Satpal Vs State (NCT) of Delhi

Court: Delhi High Court

Date of Decision: May 9, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313

Evidence Act, 1872 â€” Section 27

Penal Code, 1860 (IPC) â€” Section 120A, 120B, 201, 302

Citation: (2011) 6 AD 125 : (2011) 3 ILR Delhi 800

Hon'ble Judges: Manmohan Singh, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Ashwani Vij, in Criminal A. 621/2009, A.J. Bhambhani, Nisha Bhambhani, Sonia Raina and Victor A., in Criminal A. 39/2010, for the Appellant; Richa Kapoor, A.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Manmohan Singh, J.

These two appeals are directed against the judgment dated 24.07.2009 and order on sentence dated 29.07.2009

delivered by the Addl. Sessions Judge, Delhi in Sessions Case No. 172/2008 whereby both the Appellants were directed to undergo rigorous

imprisonment for life and further sentenced to pay a fine of Rs. 2,000/- each u/s 302 IPC and in case of default in payment of fine to further

undergo simple imprisonment for two months each for committing the murder of Manoj Kumar (hereinafter referred to as the deceased) husband

of Smt. Guddo @ Sonia who is the Appellant in Criminal Appeal No. 621/2009. The Appellants were further directed to undergo rigorous

imprisonment for life and to pay a fine of Rs. 2,000/- each u/s 120B IPC and in case of default of payment of fine, to further undergo simple

imprisonment for two months each. Both the sentences were directed to run concurrently.

2. The case of the prosecution was that a DD No. 6 A was received at PS Uttam Nagar that one person was lying in an injured condition at Gali

No. 2, Vikas Nagar. On receipt of the said DD No. 6A, ASI Raj Kumar along with WSI Indrawati Rathore, ASI Mamor Khan and Inspector

Ishwar Singh reached the spot i.e. House No. R-45, R-Block, Vikas Nagar where complainant Guddo @ Sonia was present and she told the

police officials that her husband Manoj Kumar was lying dead inside her house.

3. Thereafter, the statement of Guddo @ Sonia was recorded by the police wherein she stated that she was residing at the aforesaid address along

with her children and husband. Her husband used to do repair work of old sewing machines and on 23.09.2004 at around 7.30 am, she had gone

to leave her younger daughter Jyoti to the school, when she came back her husband was doing some repair work and he told her to call Rakesh

Baba from Tillang Pur, Kotla Village as he had some urgent work with him. Thereafter, she went to the house of aforesaid Rakesh Baba by

locking the door of their house. After reaching there she told him that her husband was calling him. She along with Rakesh Baba returned to their

house at 9.40 am. When she opened the door of her house and went inside, she raised an alarm that ""BABA MERE PATI KO BACHAO"".

Thereafter, the said Rakesh Baba went inside the house along with her and both of them saw that Manoj Kumar, husband of the complainant, was

lying dead in a pool of blood on the floor inside the room. Then Rakesh Baba told her that they should inform the police but she stated that police

should not be informed. But in the meantime somebody informed the police.

4. The police reached there and prepared ruqqa on the statement of the complainant. On the basis of the said ruqqa an FIR No. 826/2004 u/s 302

IPC was registered. The dead body was sent for postmortem at DDU Hospital. Rakesh Baba and Nisha, the elder daughter of the deceased were

interrogated. However, their statements were different from that of the complainant Guddo @ Sonia and therefore a suspicion was raised towards

her.

5. Guddo @ Sonia was again interrogated on 24.09.2004 and Rakesh Baba and Baby Nisha were also interrogated again. Thereafter, Guddo @

Sonia was arrested and made a disclosure statement.

6. Pursuant to the disclosure statement, Appellant Guddo @ Sonia got recovered one pocha and towel, stained with blood, from the parchatti of

her house, which were seized. And also pursuant to her disclosure statement, the other Appellant Satpal was apprehended at G.T. Karnal Road

bypass between 8/8.30 p.m. and arrested. He made a disclosure statement and got recovered an iron pipe from Sinola picket, near Najafgarh

drain which was seized by the police. The blood stained clothes, which he was wearing, were also seized.

7. We have heard learned Counsel for the parties and have carefully and meticulously gone through the trial court record. In the present case there

is no eye witness or direct evidence. The case of the prosecution is based upon the circumstantial evidence, inter alia, comprising of the testimony

of PW-5 Nisha, daughter of Guddo @ Sonia and PW-2 Rakesh Baba.

8. The following circumstances were alleged by the prosecution against the Appellants:

1. Appellant Satpal was a tenant in the house of the deceased Manoj and Appellant Guddo @ Sonia.

2. Appellant Satpal was seen in the lap of Appellant Guddo @ Sonia and was having illicit relations with her.

3. Deceased Manoj was last seen by PW-5 Nisha at 7.15 a.m. in the company of Appellant Satpal and Appellant Guddo @ Sonia before she left

for school while taking breakfast, when the Appellant Satpal was sitting on the chair, whereas deceased Manoj was sitting on the ground, which

shows preferential treatment to the Appellant Satpal by Appellant Guddo @ Sonia and also provides motive to eliminate deceased Manoj due to

their illicit relations.

4. Appellant Guddo @ Sonia went to call PW-2 Rakesh Baba, stating that gundas had come to kill her husband by locking the door of her house.

5. She opened the door with her key and found her husband Manoj dead and Appellant Satpal was found nowhere at that time.

6. She told PW-2 Rakesh Baba not to lodge a complaint with the police and later when he inquired about Satpal, she told him that Satpal had left

the house at 5.30/6 a.m.

7. The Appellant Guddo @ Sonia tried to create a false defence by making a wrong complaint to the police Ex. PW15/A.

8. On interrogation the Appellant Guddo @ Sonia made a disclosure statement and got recovered a pocha and towel pursuant to her disclosure

statement.

9. Appellant Guddo @ Sonia got Satpal arrested from G.T. Karnal Road, bypass on 24.09.2004.

10. After the interrogation and arrest, Appellant Satpal made a disclosure statement to the police which led to the recovery of the weapon of

offence i.e. iron pipe, which was hidden by him near Najafgarh drain and also his blood stained clothes, were seized by the police.

11. The postmortem report duly corroborates the injury caused on the body of the deceased Manoj by the said weapon of offence and also the

subsequent opinion of the doctor, who had conducted the postmortem and the FSL report corroborates the prosecution story.

9. The prosecution in support of its case has examined 19 witnesses. PW-1 is Ramesh Kumar (uncle of the deceased), PW-2 is the star witness,

Rakesh Kumar @ Baba, PW-3 is Hargayan Singh, Pardhan of R-Block, Vikas Nagar, Uttam Nagar, PW-4 is Rajesh Kumar, father of the

deceased, PW-5 is Nisha, elder daughter of the deceased and the another star witness, PW-6 is SI Manoj Kumar of the mobile crime team, PW-

7 is HC Surender Kumar Tyagi, photographer of the crime team, who has proved the photographs taken by him, which are 19 in number, which

are collectively Ex. PW-7/A1 to A19 and the negatives are Ex. PW7/B1 to B19.

10. PW8 is WHC Seema, the duty officer, who had recorded the relevant DD entries and proved the copy of the FIR Ex. PW-8/E, PW-9 is HC

Banwari Lal, who was the MHC(M) during the relevant period i.e. between 23.09.2004 and 22.11.2004, with whom various sealed parcels were

deposited by the I.O. during the investigation(s) of the case and who had also sent the exhibits of this case to CFSL, Hyderabad for forensic

opinion, PW-10 is HC Hattu Ram, who has proved the PCR form by virtue of which the initial call was received at 100 number at police control

room. He has proved the PCR form as Ex. PW-10/A, PW-11 is Ct. Manbir, the formal witness, who was working as special messenger at PS

Uttam Nagar on 23.09.2004 and who had delivered the copy of the FIR to the senior officers, PW-12 is Ct. Devender Kumar, who had got the

FIR registered on the basis of the ruqqa Ex. PW-8/C, recorded by the I.O. and who had also later on joined the investigation of this case on

24.09.2004 and was present, when accused Guddo @ Sonia was arrested and made her disclosure statement and got the other accused Satpal

arrested and was also present when the other Appellant Satpal got the iron pipe recovered.

11. PW-13 is Ct. Azad Singh, who took the dead body of the deceased on 23.09.2004 from his house to DDU Hospital mortuary and who on

22.04.2004 deposited various exhibits of this case with CFSL, Hyderabad. PW-14 is SI Mahesh Kumar, the draftsman, who has proved the

scaled site plan, prepared by him, which is Ex. PW-14/A. PW-15 is SI Mamor Khan, who took active part in the investigation and in whose

presence accused Guddo @ Sonia had made disclosure statement and got one pocha and towel recovered from her house and who was present

when she got the other accused Satpal arrested and was also present when the other accused Satpal got the weapon of offence i.e. iron pipe

recovered. PW-16 is Inspector Indrawati Rathore, who also took active part in the investigation(s) as was taken by PW-15 SI Mamor Khan,

PW-17 is Dr. B.N. Mishra, Medical Officer, DDU Hospital, who has proved the postmortem report of deceased Manoj. He stated that the

postmortem was conducted by the Dr. N.M. Naranaware, who had since expired and he has proved the postmortem report prepared by said

doctor as Ex. Pw-17/A and the subsequent opinion given by him, regarding the weapon of offence as Ex. PW-17/B.

12. PW-18 is Inspector Bhagwan Singh, who also took active part in the investigation(s), as was taken by PW-15 SI Mamor Khan and PW-16

Indrawati Rathore, PW-19 is ACP Ishwar Singh (retired), the I.O. of the present case, who has deposed regarding the entire investigation, as was

carried out by him during the course of the present case.

13. The trial court by its judgment found both the Appellants guilty for the murder of the deceased Manoj with common intention and passed a

sentence of imprisonment for life and further sentences as referred earlier because of the following reasons:

i. Appellant Satpal was residing as a paying guest in the house of the deceased Manoj where he had developed illicit relations with the wife of the

deceased who is another Appellant in the case, namely, Guddo @ Sonia. He was seen sitting in the lap of the Appellant Guddo @ Sonia by PW-5

Nisha and both the Appellants were last seen together with the deceased at 7.15 a.m. on 23.09.2004.

ii. Appellant Guddo @ Sonia went to PW-2 Rakesh Kumar @ Baba with the complaint that he should accompany her to her house as three

gundas have come to kill her husband and when PW-2 Rakesh Baba along with Appellant Guddo @ Sonia reached the house of the deceased,

the entry gate was opened by the Appellant Guddo @ Sonia with her own keys and at that time Manoj was found dead by the Appellant Guddo

@ Sonia who raised an alarm and, thereafter, she made a false complaint/statement to the Police Exhibit PW-15/A in which she concocted a false

story and mislead the police.

iii. Further when PW-2 Rakesh Kumar @ Baba enquired about the accused Satpal, she replied that he had already left her house at about 5.30/6

a.m. and did not return to their house on the said date or the next day. Later on as per the disclosure statement of Guddo @ Sonia, accused Satpal

was arrested from G.T. Karnal Road bypass on 24.09.2004.

iv. Thereafter, the Police recovered the weapon of offence which was an iron pipe from the bushes near Nazafgarh drain on the pointing out of the

accused Satpal. He was also found wearing the blood stained clothes and the blood group on the clothes matched with that of the deceased

Manoj as per the opinion of the doctor who conducted the postmortem.

14. For the aforesaid reasons, the trial court came to the conclusion that inference can be drawn against both the Appellants to have committed the

murder of the deceased Manoj with the common intention/agreement to remove him from their way due to their having illicit relations with each

other and, therefore, prosecution was able to prove the case beyond reasonable doubts and also proved the offence of criminal conspiracy as

defined u/s 120A IPC punishable u/s 120B IPC against both the Appellants.

15. The case of the prosecution u/s 201 IPC was rejected by the trial court on the findings that the prosecution failed to prove that the Appellants

had caused disappearance of any evidence i.e., ""Pocha"" and ""towel"" which were allegedly used to wipe out the blood of the deceased from the

floor of the house.

16. The learned Counsel appearing on behalf of accused Guddo @ Sonia has argued that there is no evidence pertaining to the conspiracy of

murder of deceased and the prosecution has also failed to establish the motive as it is clear from the evidence of PW-3 Hargyan Singh that when

he told the deceased that his wife was having illicit relations with Satpal the deceased did not pay heed to it. This shows that the prosecution has

failed to establish the motive of the murder. It has also been argued by the learned Counsel for the Appellant Guddo @ Sonia that PW-5 Nisha

was an interested witness in the present case and is a child witness and came to depose before the Court from the custody of her paternal

grandfather. PW-5 also made several improvements in her statement before the Court. If PW-5 was a natural witness to the alleged incident then

her statement ought to have been recorded on the date of occurrence itself. Therefore, the prosecution has also failed to establish its case beyond

reasonable doubts against Appellant Guddo @ Sonia.

17. Let us first deal with the submission of the learned Counsel appearing on behalf of accused Guddo @ Sonia. Admittedly, PW-5 Nisha who is

the daughter of the accused Guddo @ Sonia, has deposed that on the date of occurrence when she left for school at around 7 a.m. accused Satpal

was taking his breakfast, which had been cooked by her mother, while sitting on a chair and at the same time her father was also taking breakfast

while sitting on the floor. This testimony of PW-5 has remained unrebutted in cross-examination. It is a matter of fact that when she left for school

on the date of occurrence she had seen her father in the company of both the Appellants while they were taking breakfast. Testimony of PW-2

Rakesh Kumar @ Baba is also relevant and he has deposed that he knew both the accused as well as the deceased husband of accused Guddo

@ Sonia. He further deposed that on the date of occurrence i.e., on 23.09.2004 at 9 a.m. Appellant Guddo @ Sonia came to his house and

requested him to save her husband as three gundas have come to kill her husband. She told him that she had come to him after locking her husband

Manoj in a room however, she stated that she had not seen any of the three gundas. She also made a telephone call from his house. Thereafter she

along with Rakesh Baba left for her house on a two-wheeler scooter and Guddo @ Sonia opened the entry gate of her house with the keys which

she was having with her and walked into the innermost room of her house and after unlocking the door of the same cried ""MANOJ KO BACHA

LO"". Thereafter, on hearing her cries, some neighbours also came there and thereafter he along with those neighbours saw the dead body of

Manoj, which was lying on the floor next to the double-bed in the innermost room of her house.

18. In her statement u/s 313 Code of Criminal Procedure, Appellant Guddo @ Sonia stated that she had been falsely implicated in this case at the

behest of interested witnesses and police officials. According to her- ""on 23.09.2004, I left my daughter Nisha to the school at about 7:00 a.m. in

the morning and when I came back to home, I saw my husband lying in the pool of blood. I called Rakesh Baba who is a friend of my husband to

my home and on my request the police was called and the police took my signature on some blank papers and I was kept in one room of my home

and later on in the evening I was taken to the PS and after that I was produced before the court and since then I am in judicial custody"".

19. The said statement made by the accused Guddo @ Sonia u/s 313 Code of Criminal Procedure is not in consonance with the evidence of PW-

2 Rakesh Kumar @ Baba and that of PW-5 Nisha (her real daughter) as PW-5 Nisha has categorically stated that she had last seen her father in

the company of both the accused persons alive while they were having breakfast when she left for school at 7.15 a.m. Similarly, PW-2 Rakesh

Baba has deposed that when Guddo @ Sonia came to her house on the date of incident at 9 a.m. she informed that Manoj is in danger as three

gundas have come to kill him and she has come to him by locking the door from outside.

20. As per the version of Guddo @ Sonia recorded by the police, her husband was alive when she came to the house of PW-2 Rakesh Kumar @

Baba at 9 a.m. or thereabouts, but was found dead when she returned to her house with PW-2 Rakesh Kumar @ Baba and opened the door with

her own keys. It appears that she had given a false version in her statement u/s 313 Code of Criminal Procedure and tried to create a false defence

by making an incorrect complaint exhibit PW-15/A to the police on the basis of which the FIR was lodged in which a different version of her

statement has come wherein she has stated that when she returned at 7.30 a.m. to her house after leaving her daughter Jyoti to the school, her

husband Manoj was trying to convert the bucket into angithi and her husband told her to call Rakesh Baba from Tilang Pur, Kotla Village.

21. As per her version, after locking the door from outside she went to the village and later on she along with PW-2 Rakesh Baba came back to

the house at 9.40 a.m. when she opened the door with her own keys, she found her husband dead. Admittedly there was no other entry gate in the

house. It appears that she had tried to create a false story by making a wrong complaint to the police exhibit PW-15/A which goes against her and

the same shows the unnatural conduct of the Appellant Guddo @ Sonia after the commission of the crime to somehow wriggle out of the same.

22. It is a well established legal principle that in a case based on circumstantial evidence where an accused offers a false explanation in his

statement u/s 313 Code of Criminal Procedure in respect of an established fact, the said false denial could supply a missing link in the chain of

circumstances appearing against him.

23. From the above discussion, following incriminating circumstances appear against accused Guddo @ Sonia:

(i) Accused Guddo @ Sonia tried to mislead the investigating agency regarding the murder of her husband, Manoj.

(ii) Accused Guddo @ Sonia did not give any explanation in respect of facts which were within her knowledge.

(iii) The conduct of accused Guddo @ Sonia was most suspicious at the time of the murder of the deceased and after the murder.

(iv) Accused Guddo @ Sonia gave false answers in her statement u/s 313 Code of Criminal Procedure

24. The well known rule governing circumstantial evidence is that:

(a) the circumstances from which the inference of 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; (b) the circumstances should be of a determinative

tendency unerringly pointing towards the guilt of the accused; and (c) the circumstances, taken collectively, are incapable of leading to any

conclusion, on a reasonable hypothesis, other than that of the guilt of the accused.

25. No doubt, the courts have also added two riders to the aforesaid principle namely, (i) there should be no missing links but it is not that every

one of the links must appear on the surface of the evidence, since some of these links can only be inferred from the proved facts and (ii) it cannot

be said that the prosecution must meet each and every hypothesis put forward by the accused however far-fetched and fanciful it may be.

26. In the decision reported as Rakesh Kumar and Others Vs. State, , a Division Bench of this Court held that circumstantial evidence in order to

furnish a basis for conviction requires a high degree of probability, that is, so sufficiently high that a prudent man considering all the facts, feels

justified in holding that the accused has committed the crime with which he is charged.

27. In dealing with the argument advanced by the learned Counsel for the accused Guddo @ Sonia on the point of motive, the testimonies of PW-

1 Ramesh Kumar and PW-4 Rajesh Kumar, father of the deceased, are also relevant. PW-4 Rajesh Kumar in his testimony has deposed that

deceased Manoj was his son who married accused Guddo@ Sonia against his wish. He also deposed that he did not attend the said marriage nor

he had thereafter seen his son till he was dead. He deposed that he had knowledge that accused Guddo @ Sonia had a daughter from her

previous husband as per information received from his deceased son Manoj. He also identified the dead body of deceased Manoj.

28. PW-1 Ramesh Kumar further deposed that accused Satpal was residing in the first floor of the house of his nephew Manoj as a tenant for the

last 6-7 months from the date of occurrence. He also deposed that about 5-6 months before the occurrence, deceased Manoj had informed him

that his wife Guddo @ Sonia was putting pressure on him for transferring house property bearing No. R-45, Vikas Nagar, Near Uttam Nagar,

Delhi where they were residing in her name but deceased Manoj was not willing to do so. He further deposed that when he had gone to the house

of his nephew Manoj about one month before the occurrence, he was not present in the house. His wife Guddo @ Sonia and daughter Nisha

(PW-5) were present. He further deposed that PW-5 Nisha told him that accused Satpal, who was a tenant on the first floor, was seen by her in a

compromising position with the accused Guddo @ Sonia. Though in cross-examination he was confronted with the statement Ex. PW-1/DA

where it was not so recorded. However, he volunteered that he had so stated but police had not recorded the same. If we read the testimony of

PW-2 and PW-5 together with the statement of PW-1, it appears to us that the deceased was an obstacle in her love life and she wanted that the

deceased should transfer the property in her name but Manoj was not inclined to do so. This provided a motive to the accused Guddo @ Sonia to

eliminate the deceased Manoj in order to further her alleged illicit relations with accused Satpal. Further, it is also pertinent to note as to why her

own daughter would make a false statement against her.

29. It would be necessary to quote the following observations of Supreme Court in the decision reported as State of U.P. Vs. Babu Ram,

11. We are unable to concur with the legal proposition adumbrated in the impugned judgment that motive may not be very much material in cases

depending on direct evidence whereas motive is material only when the case depends upon circumstantial evidence. There is no legal warrant for

making such a hiatus in criminal cases as for the motive for committing the crime. Motive is a relevant factor in all criminal cases whether based on

the testimony of eye witnesses or circumstantial evidence. The question in this regard is whether the prosecution must fail because it failed to prove

the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves

the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for such motive could then

be counted as one of the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record

what was in the mind of the Respondent. Even if the investigating officer would have succeeded in knowing it through interrogations that cannot be put

in evidence by them due to the ban imposed by law.

12. In this context we would reiterate what this Court has said about the value of motive evidence and the consequences of prosecution failing to

prove it, in *Nathuni Yadav v. State of Bihar* and *State of H.P. v. Jeet Singh*. The following passage can be quoted from the latter decision:

33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence

would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded

in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would

have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the

prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the

person whom he offended.

30. The following are the observations of Supreme Court in the decision reported as *Ujjagar Singh Vs. State of Punjab*,

It is true 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 (to use the cliché) the motive is in the mind

of the Appellant and can seldom be fathomed with any degree of accuracy.

31. In view of the above settled law, we do not find any merit in the argument of the learned Counsel that the case set up by the prosecution

against the Appellant Guddo @ Sonia must fail on account of the alleged failure of the prosecution to prove the motive of Appellant Guddo @

Sonia. The present case fits into the situation contemplated in *State of H.P. v. Jeet Singh* (supra) where it was observed that "when the prosecution

succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such

ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal

weakness of the prosecution." This is so, because, in the present case the prosecution has succeeded in demonstrating the possibility of there being

a desire to eliminate Manoj on the part of the Appellant Guddo @ Sonia so that her path to Satpal was clear.

32. For the aforesaid reasons and incriminating circumstances appearing against accused Guddo @ Sonia, we are of the considered view that

accused Guddo @ Sonia is guilty of the murder of the deceased. Thus, the appeal filed by her is liable to be dismissed.

Case of Satpal

33. Apart from the common grounds taken by both the Appellants, Satpal in his appeal has also challenged the impugned judgment as well as

order on sentence on the following additional grounds:

a) That the alleged weapon of offence, i.e., iron pipe alleged to have recovered from the Appellant is doubtful as there was material contradiction

in the prosecution version as PW-3 Hargyan Singh has stated that he was present when the said ""saria"" was recovered but, PW-6 SI Manoj

Kumar deposed that no such ""saria"" or ""iron rod"" was ever recovered in his presence whereas PW-16 Inspector Indrawati Rathore says that the

above ""iron rod"" was recovered from Najafgarh drain. As such, the prosecution could not really connect the same to the Appellant.

b) That there is no direct evidence available on record to prove that Satpal was a tenant in the house of the deceased and also there is no direct

evidence to prove that the deceased seen the Appellant with his wife Guddo @ Sonia in a compromising condition.

c) That no public witness was ever called by the prosecution at the time of arrest of the Appellant or at the time of his disclosure statement as well

as at the time of recovery of weapon of offence.

34. It is a settled law that the circumstances forming the evidence must be conclusively established and even if, when so established they must form

such a complete chain that it is not only consistent with the guilt, but inconsistent with any reasonable hypothesis of innocence.

35. It is the admitted case of both the defence and the prosecution that it was the second marriage of Guddo @ Sonia with the deceased Manoj.

Regarding the tenancy of Satpal, the prosecution has relied upon the testimony of PW-1 Ramesh Kumar, PW-2 Rakesh Kumar and PW-3

Hargyan Singh and also the testimony of PW-5 Nisha.

36. As far as the case against the accused Satpal is concerned PW-5 Nisha, daughter of the deceased, had last seen both the accused persons

together in the morning and she is the witness of last seen evidence of the presence of the deceased in the company of accused Guddo @ Sonia

and Satpal. She has also deposed that Appellant Satpal was having illicit relations with the Appellant Guddo @ Sonia. The learned Counsel for the

Respondent has argued that Appellant Satpal got effected the recovery of the weapon of offence and his blood stained clothes after his arrest and

the fact of throwing away the weapon of offence was only in the knowledge of the accused.

37. PW-15 SI Mamur Khan, PW-16 Inspector Indrawati Rathor and PW-18 Inspector Bhagwan Singh have deposed regarding the arrest of

Satpal from G.T. Karnal Road, Delhi Bypass on 24.09.2004. PW-16 and PW-18 have admitted that no public person was joined in the

investigation at the time of arrest of Satpal. After the arrest, he made a disclosure statement Ex.PW-15/G and got recovered the weapon of

offence, i.e., iron rod, from inside the bushes of Najafgarh Drain, near Sanola bridge, which he had concealed there. In his statement u/s 313 Code

of Criminal Procedure, no explanation has been assigned by Satpal as to how the said pipe was got recovered by him, barring his denial. PW-16

and PW-18 have also deposed that at the time of arrest of Satpal from G.T. Karnal Road Bypass, there were blood stains on his clothes and the

same were also taken into possession vide memo Ex.PW-15/1 i.e. a pant and shirt, which he was wearing at the time of arrest and the same are

Ex.P7 and Ex.P8.

38. In the post-mortem of the deceased (Ex.PW-17/A), the following injuries were found on his body:

1. One lacerated wound seen behind left ear joint touching the pale of pinna, 2.5 cm from lobate of the ear left & 2 cms from left mastoid process

margins are abraded. K Contused size 2.5 cm x scalp deep.

2. One contusion seen an middle of left ear pinna 3 cms above left ear lobale & 5.5 cm from helix of left ear. Red coloured 0.7 x 0.7 cm.

3. One lacerated wound seen on left parietal occipital region placed vertically oblique, located at 18 cms from root of the nose & 12.5 cm from left

ear helix. Margins are contused & abraded size 6 cms x 1 cm scalp deep.

4. One lacerated wound seen on right occipital region horizontally oblique, 9.5 cm from right mastoid & 11.5 cm from injury No. 3. Margins are

abraded & contused size 5 cm x 1 cm scalp deep.

5. Lacerated wound seen on left occipital area, 7 cm from injury No. 3 & 4.8 cm from injury No. 4, vertically oblique size 4.1 cm x 1.1 cm x scalp

deep margins are abraded & contused.

39. The cause of death had been opined by the doctor ""death due to head injury"". He had also opined that all the injuries were ante-mortem in

nature. In his statement, PW-17 had specifically stated that the post-mortem was conducted by Dr. N.M. Naranaware, who had expired and he

was conversant with the handwriting and signatures of Dr. N.M. Naranaware, as he had worked with him during the course of his duties. PW-17

has also stated that he had seen the opinion (Ex.PW-17/B) given by him regarding the weapon of offence and as per the said opinion, the injuries

mentioned in the post-mortem (which is proved by PW-17 as secondary evidence) could have been caused from the weapon of offence produced

before him, which was got recovered by Satpal from the bushes of Najafgarh Drain, near Sanola bridge, as discussed earlier.

40. The contention of the learned Counsel for Statpal is that since no public person was joined at the time of recovery of the weapon of offence,

therefore, the said recovery is not believable. It is also stated that there are many contradictions in the recovery of weapon of offence which are

available in the testimony of PW-3 Hargyan Singh, who in his cross-examination, has stated that one Saria was taken by the police from the spot in

his presence. Similarly, in the cross-examination of PW-6 SI Manoj Kumar, he stated that he could not tell whether any rod or other article was

seized by the investigating officer when he visited the spot on 23.09.2004.

41. We have examined the post-mortem report. It appears to us that all the injuries were consistent to have been caused by a blunt weapon, i.e.,

iron pipe in this case and the same corroborates the story of the prosecution. The nature of the injury found on the head of the deceased shows

that it was sufficient in the ordinary course of nature to cause death, as the same was caused in the present case on the vital part of the body of

human being, i.e., head. Even otherwise, there was no suggestion in the cross-examination that the said injuries were not sufficient in the ordinary

course of nature to cause death. The time of death also corroborates the prosecution story as per the material placed on record. The DD entry 6A

(Ex.PW-8/A), coupled with the statement of PW-2 Rakesh @ Baba, gives indication the proximate time about the death given by the doctor.

42. The submission of the learned Counsel for Satpal is without any force, as the prosecution case had never been that any Saria was seized from

the accused person from the spot and as far as the statement PW-6 is concerned, in fact, he simply stated that he did not know whether any rod or

any other article was seized.

43. In the case of State of Maharashtra Vs. Suresh, the Supreme Court has held as under:

26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed

without stating that it was conceded by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else

concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the

criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it

was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know

of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well justified

course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle

embodied in Section 27 of the Evidence Act.

44. This judgment would apply in the facts and circumstances of the present case, as the accused Satpal in his statement recorded u/s 313 Code of

Criminal Procedure failed to give any explanation as to how the said pipe was got recovered by him. Therefore, the presumption regarding the

recovery of the weapon clearly goes against Satpal.

45. As far as recovery of a pant and shirt is concerned, as per Ex.PW19/H, the examination report from CFSL, it is proved on record that the

said Ex.P7 and P8 were thoroughly examined by the chemical tests and the result was that the blood was detected on Ex.P7 and Ex.P8 i.e. a pant

and shirt, which Satpal was wearing at the time of arrest. In fact no suggestion was given in the cross-examination of PW-16 and PW-18 that the

said blood stained clothes were not seized from the accused Satpal or that the blood of the deceased was not sprinkled on the said clothes by the

Police. Rather, it is clearly mentioned in the result that the blood group B was detected on Ex.P7 and Ex.P8 i.e. Pant and Shirt of Satpal. Further,

Satpal, in his statement recorded u/s 313 Code of Criminal Procedure, failed to explain anything as to how he was found wearing the blood stained

clothes having the blood of the deceased as per the report of CFSL Ex.PW-19/H which corroborates the prosecution story. The same was having

blood group B which was also blood group of the gauze piece of the deceased, samples of which were taken from the spot by the investigating

officer on 23.09.2004. Hence, it is clear that the blood group of the deceased matched with the blood stains available on Ex.P7 and Ex.P8, i.e.,

pant and shirt, which he was wearing at the time of arrest. Satpal has failed to give any explanation as to how the said blood stained marks were

found on his clothes. Thus, that is a grave incriminating fact regarding the culpability of the accused Satpal.

46. Regarding criminal conspiracy between the accused persons to kill deceased Manoj, it is well settled law that there is no difference between

the mode of proof of offence of conspiracy and that of any other offence, it can be established by direct or circumstantial evidence. In the present

case, from the conduct of the accused persons, coupled with the evidence of PW-1 to PW-5, the inference can clearly be drawn regarding the

conspiracy to commit the murder of the deceased. From the evidence of PW-1 to PW-5, it has been established by the prosecution that Satpal

was residing as a tenant in the house of the deceased and he had developed illicit relations with the wife of the deceased, who is another accused in

the present case. PW-5 Nisha, who is the real daughter of Guddo @ Sonia, had seen both Satpal and Guddo @ Sonia together last time with the

deceased at 7:15 a.m. on 23.09.2004 when she left for the school.

47. After having considered the evidence recorded in the matter, it is clear that the prosecution has been able to establish that Satpal was residing

as a paying guest in the house of deceased Manoj along with Guddo @ Sonia. PW-2 Rakesh Kumar @ Baba knew both the accused persons

and also the deceased husband of accused Guddo @ Sonia as both of them used to go to one ""Mazar"" situated at Vikas Nagar for offering

prayer.

48. Further, when Guddo @ Sonia and Rakesh @ Baba reached the house of the deceased, the door of the entry gate was opened by Guddo @

Sonia with her own keys, at that time Manoj was found dead. When PW-2 Rakesh asked Guddo about the Satpal, she replied that he had already

left her house at 5:30/6:00 a.m. and he did not return to the house on the said day or next day. After the disclosure statement, Guddo @ Sonia

lead the Policy party and got arrested Satpal at G.T. Karnal Road Bypass at about 8:30 p.m. and Satpal got recovered the weapon of offence and

also found wearing the blood stained clothes which was having the blood of the deceased Manoj as the blood stained clothes were matching with

the blood group of the deceased. The post-mortem report also opined that the injuries, found on the body of the deceased at the time of

conducting the post-mortem, could have been caused by the said weapon. From these circumstances, an inference can easily be drawn that both

Guddo @ Sonia and Satpal, with the same object of removing him from their way as the deceased was an obstacle in her love life and Guddo @

Sonia also wanted her husband to transfer the property in her name and the deceased was not inclined to do so, committed the murder of

deceased Manoj. We are of the view that the prosecution has been able to prove the case u/s 120A IPC and both are punishable u/s 120B IPC.

49. For the reasons given in the preceding paragraphs, we maintain conviction of the Appellant Satpal u/s 302 IPC and also maintain the

conviction of both Guddo @ Sonia and Satpal u/s 120B IPC. We agree with the judgment and order on sentence passed by the trial court. The

appeal filed by the Satpal is also dismissed.

50. The net result is that both appeals are dismissed.