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(47) Thus, looking from any point of view, the act of the State Government in abolishing a 'C' Class Municipality and restoring old status is not only supported by the Statutory provisions contained in the Punjab Gram Panchayat Act, 1952 but the object is laudable if Article 40 of the Constitution is also taken into consideration.

(48) In the wake of the above, we find no merit in the writ petitions and the same are, accordingly, dismissed leaving the parties to bear their own costs.

A Jain

Before M. Jeypaul & Anita Chaudhary, JJ.

TARLOK SINGH—*Petitioner*

versus

STATE OF PUNJAB—*Respondents*

CRA-D No. 159-DB of 2009

September 17, 2013

Indian Penal Code, 1860 - Ss.201, 302 and 364 - Circumstantial evidence/Benefit of doubt - Appellant was tried for kidnapping and murdering his daughter and her lover H - Bodies of both were found from canal - Prosecution relied upon circumstantial evidence, viz., absence of appellant from his house, refusal of appellant to accept dead body of his daughter, not attending her funeral and disclosure and recovery of kappa and tractor trolley - However, police failed to collect any evidence as to who had actually provided information to family of complainant about kidnapping though a call was made on mobile phone of complainant's son - Held, that though above circumstances pointed needle of suspicion towards appellant, prosecution had failed to bring crucial circumstances and there was no link in circumstances set up by them to establish guilt of accused beyond reasonable doubt - Benefit of doubt given to appellant - Appellant acquitted.

Held, that the police failed to collect any evidence as to who had actually provided the information to the family of the complainant

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about the kidnapping though a call was made on the mobile phone of the complainant's son. The prosecution story is therefore doubtful.

(Para 18)

Further held, that if the prosecution case is based on circumstantial evidence then three conditions must be satisfied: (i) the circumstance must be cogently and firmly established (ii) the circumstance should be of definite tendency unerringly pointing towards the guilt of the accused (iii) the circumstance taken cumulatively should form the chain so complete that there is no escape from the conclusion that the crime was committed by the accused.

(Para 20)

Further held, that in case depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion howsoever so strong cannot be allowed to take the place of proof. The Court has to satisfy itself that the various circumstances in the chain of evidence should be completely established and there is no likelihood of the offence being committed by someone else.

(Para 22)

Further held, that the next circumstance set up by the prosecution is that the police party along with the complainant had gone to the house of the accused but he was not there. Mere absence from the house is not enough. It may create a doubt and point the needle of suspicion towards him but nothing more than that. It can be a crucial circumstance but the prosecution failed to find further lead in the case. Another circumstance set up by the prosecution was that the appellant did not take the body of his daughter nor attended the cremation. This is a important circumstance and points the needle of suspicion towards him and it goes to show that he was not happy with his daughter's affair and nothing more.

(Para 24)

Further held, that the prosecution had failed to bring crucial circumstances and there is no link in the circumstances set up by them and they had failed to establish the guilt of the accused beyond reasonable doubt. A grave and heinous crime was committed but there is no

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satisfactory proof of the guilt. There was no option but to give the benefit of doubt to the accused.

(Para 28)

Baldev Singh, Sr. Advocate with Deepender Singh, Advocate
for the appellant.

B.S.Bhalla, Addl. AG, Punjab.

ANITA CHAUDHRY, J. (Oral)

(1) The present appeal is directed against the judgment of conviction dated 17.01.2009 and order of sentence dated 23.01.2009 passed by Addl. Sessions Judge, Ferozepur. The appellant - Tarlok Singh was convicted in FIR No.120 dated 10.07.2007 registered under Sections 302, 201 and 364 IPC at police station City Ferozepur. The appellant was sentenced to imprisonment mentioned herein below:

<i>Offence</i>	<i>Sentence</i>
U/s 302 IPC	Imprisonment for life along with a fine of ₹10,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.
U/s 364 IPC	Rigorous imprisonment for five years along with a fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment for three months
U/s 201 IPC	Rigorous imprisonment for three years along with a fine of ₹3,000/- and in default of payment of fine to further undergo rigorous imprisonment for two months

(2) All the sentences were directed to run concurrently. Accused Sukhpal Singh @ Pappu was given the benefit of doubt and acquitted of the charges.

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(3) This is a case of honour killing where two young lives were snuffed. As per the prosecution story, the girl's father and brother were stated to be a perpetrators of the crime. The incident was reported to the police by Jaswant Singh - father of deceased Harjinder Singh. Harjinder Singh had gone to the market to buy house-hold articles on 10.07.2007 at about 9.00 pm and he never returned. The complainant received information that his son had been abducted by Tarlok Singh and his associates. The police was informed and the police party headed by SI Rakesh Kumar proceeded to village Gokhiwala in search of Harjinder Singh. The police found that there was no male member in the house of Tarlok Singh. The complainant suspected Tarlok Singh and his son to have murdered his son as he was having an affair with Harpreet Kaur, daughter of Tarlok Singh. Both of them were of different castes. The police initiated intensive search of the area but he could not be found anywhere. Tarlok Singh was produced before the police by Kikkar Singh. During his interrogation, he admitted that his daughter Harpreet Kaur had illicit relations with Harjinder Singh, which he and his family were objecting and Harjinder Singh had been warned. He admitted that he took both the boy and girl to the canal where they were beaten and thrown in the canal after tying their hands and feet. Meanwhile, the police received information that dead body of Harpreet Kaur had been discovered by the police of Police Station City Ferozepur. Her body was found floating in a canal in the area of village Hazara Singh Wala. On receipt of this information, the police party along with Iqbal Singh and Jagdev Singh reached the spot. The body was taken out and sent for postmortem. No one came forward to claim the dead body of Harpreet Kaur. The police cremated the said dead body.

(4) On the same day, the complainant was informed by Naranjan singh that a dead body of a young man, whose hands and feet were tied, was found in a minor canal in the area of village Awan, Police Station Mamdot. The police brought out the body from the canal. The hands and feet of the dead body were tied with 'Nawar' (flat cotton rope). The body was identified by Sukhdev Singh and Sucha Singh. Thereafter, it was sent to the City Hospital for the postmortem.

(5) On the sustained interrogation of Tarlok Singh, he disclosed that injuries were inflicted with a kappa, which had been concealed

in the fields and the tractor trolley, used in the commission of offence, had been parked in his house and he could get it recovered. Consequent to the disclosure statement, Tarlok Singh led the police party to the disclosed place and got the kappa and tractor trolley recovered. During investigation, the police found that Tarlok Singh and his son Sukhpal Singh had committed the murder and had thrown the bodies in the canal. Sukhpal Singh was also arrested. On completion of the investigation, a report was laid before the Court. Charge was framed against the accused under Section 302, 201 and 364 IPC to which they pleaded not guilty and claimed trial.

(6) The prosecution examined Jaswant Singh - PW-3, his son Sukhdev Singh - PW-4, the official witnesses, the investigating officer and the medical officers Dr. Nirmal Dass -PW-1 and Dr. Rajinder Manchanda-PW-2.

(7) Dr. Nirmal Dass -PW-1 had conducted the postmortem examination on the dead body of Harpreet Kaur and had noted the following injuries on her person:

1. An incised wound 10.0 x 6.0 cm in size was horizontally placed on the front of the neck in the middle at the level of thyroid cartilage and was equi-distant on both the sides of the mid-line with tailing were present on the left end of the wound. It was present 7 cm above the supra sternal notch. Clotted blood was present. On dissection, the skin, the sub-cutaneous tissues, the platyama, the thyroid cartilage and gland, the trachea and the oesophagus through and throat, the jugular veins and both the carotid arteries were cut. The traces of clotted blood were present in the larynx and the trachea and the oesophagus, haemorrhage were present in the sub-cutaneous tissues. Clotted blood was present in the wound.
2. A reddish blue diffused swelling 11 x 8 cm was present on the top and outer aspect of left shoulder.
3. A reddish blue diffused swelling 5 x 6 cm was present on the back of the right shoulder.

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4. A reddish blue diffused swelling 12 x 9 cm was present on the front and upper one third of left thigh.

5. A reddish diffused swelling 6 x 4.5 cm was present on the back of the right wrist joint.

6. A superficial incised wound 3 x 1.25 cms horizontally placed was present on the outer aspect of left knee. Clotted blood was present.

7. A superficial incised wound 2 x 1 cm was present on the outer aspect of the left knee 3 cm above the injury No.6. Clotted blood was present.

8. A reddish blue diffused swelling 18 x 5 cm was present on the right knee and adjoining upper part of the right leg.

9. A reddish blue diffused swelling 14 x 7.5 cm was present in upper one third of outer aspect of right thigh.

10. An incised wound 4 x 1 cm was obliquely placed on the right parietal region of the head 10 cm above and behind the pinna of right ear, hair were cut. Clotted blood was present.

11. A reddish blue diffused swelling 5.5 x 4 cm was present on the back of the left wrist joint.

(8) All the injuries were ante mortem in nature. The cause of death was due to cutting of trachea as a result of injury No.1, which was sufficient to cause death in the ordinary course of nature.

(9) Dr. Rajinder Manchanda, Medical Officer - PW-2 had conducted the postmortem examination on the dead body of Harjinder Singh and had noted the following injuries on his person:

1. A contusion measuring 22 x 14 cm on the top of the right shoulder at its outer aspect. On dissection, the underlying tissues were found congested and infiltrated with blood.

2. A blenching area circular in shape around the lower side of both 4½ cm in measurement and there is an abrasion measuring 2 cm x 1 cm on this area. On dissection, the underlying tissues were found congested and infiltrated with blood.

3. A blenching area circular in shape and the lower side of both the legs $4\frac{1}{2}$ cm in measurement. On dissection, the underlying tissues were found congested and infiltrated with blood.

4. An abrasion measuring $4\frac{1}{2}$ cm x $4\frac{1}{2}$ cm on the left side of neck, near angle of mandible. On dissection, the underlying tissues were found congested and infiltrated with blood.

(10) The cause of death was due to asphyxia as a result of ante mortem drowning as diatoms were found sternum and it was sufficient to have caused death in ordinary course of nature.

(11) After the close of the prosecution evidence, the incriminating material was put to the accused in the statement under Section 313 Cr.PC and they pleaded false implication. No evidence was led in the defence.

(12) The trial Court was of the view that the case had been fully established as against Tarlok Singh and convicted and sentenced him to the imprisonment mentioned hereinbefore whereas accused Sukhpal Singh was acquitted.

(13) We have heard the submissions made by learned counsel for the parties and with their assistance carefully considered the record.

(14) Learned counsel appearing for the appellant had urged that the prosecution case was based upon circumstantial evidence and there is no eye-witness as the entire structure of the prosecution edifice is based on hear say information, which has no source of certification by anyone and in the first report lodged with the police, the complainant did not disclose as to who had given the call and the police had not investigated on that fact nor had collected the call details and they were required to show that some call had been received. It was urged that no fact was discovered at the instance of the accused and the prosecution has not been able to connect the kappa with the incident and only scientific investigation could have connected it to the incident and conviction should not have been recorded on mere suspicion. It was urged that no blood was found on the kappa and the complainant had stated that the tractor trolley was brought to the police station in the early hours of 10.07.2004 and the alleged recovery is planted. It was

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urged that Sukhdev Singh - PW-2 had also stated that Tarlok Singh was brought to the police station the same evening at 8.30 pm and there is no circumstance which connects him to the crime and the appellant should be acquitted.

(15) Per contra, the counsel representing the State has submitted that the prosecution witnesses have spoken about the affair between the two and the girl had been withdrawn from the school so as to distance them and one of the circumstance is that none from the girl's family came forward to take the dead body of Harpreet Kaur and the police had cremated her and it was a relative, who had identified the dead body and not the parents. It was urged that an unknown person had informed the father that his son had been abducted by Tarlok Singh and immediately thereafter they went to the police station accompanied with the police to the house of the appellant and no male member was available in the house that night nor the tractor trolley was there and it is another circumstance which has been spoken to by the witness. It was contended that both the girl and the boy were badly beaten up and their bodies were thrown in the canal and the boy had no chance of survival as his hands and feet were tied and it was a case where the father could not reconcile to a fact that his daughter had chosen a boy of lower caste for herself and they had murdered both of them and the case of prosecution has been duly proved and the judgment and sentence passed by the trial Court was well reasoned and the appeal be dismissed.

(16) Jaswant Singh had lodged a report Ex.P-24 with the police that his son had left the house at about 9.00 pm but had not returned and they had come to know that Tarlok Singh s/o Man Singh and some others had kidnapped him. Jaswant Singh while appearing in Court as PW-3 had stated that he along with the police went to the house of Tarlok Singh and only the ladies were present and they returned back. He had disclosed that both the children were class mates in Gurukul School, Ferozepur and had an affair. On knowing this fact, Tarlok Singh had withdrawn his daughter from the school while his son Harjinder Singh continued with his studies. After completing his studies, Harjinder Singh returned to start the business. He stated that he not

only suspected but was sure that Tarlok Singh and others had kidnapped his son. He stated that Sukhdev Singh, his son had received a call from village Gokhiwala that his brother had been kidnapped by Tarlok Singh and his associates and he was being tortured by them. He stated that dead body of Harpreet Kaur was found the next day. He also stated that the dead body of his son was found in the canal in the area of village Awan.

(17) Sukhdev Singh-PW-4 had stated that his brother Harjinder Singh and Harpreet Kaur were having relations and were meeting each other and Harjinder Singh wanted to marry Harpreet Kaur but both of them belong to different communities and when Tarlok Singh and Sukhpal Singh came to know about their relationship, they got angry. He stated that he received a call from unknown that Harjinder Singh had been kidnapped and an application was given to the police. He stated that from that very moment they knew that Harjinder Singh would be killed. He stated that the next afternoon they came to know that Harpreet Kaur's dead body was recovered by the police from different police station. He stated that no weapon or blood was found at Tarlok Singh's house.

(18) It is the admitted case of the prosecution that the dead body of Harpreet Kaur and Harjinder Singh was not discovered at the instance of Tarlok Singh. Harpreet Kaur's dead body was found by the police of police station Mamdot while the information regarding the dead body of Harjinder Singh was given to the complainant by his brother Naranjan Singh. The police failed to collect any evidence as to who had actually provided the information to the family of the complainant about the kidnapping though a call was made on the mobile phone of the complainant's son. The prosecution story is therefore doubtful.

(19) The prosecution case is based upon circumstantial evidence. The circumstances put-forward by the prosecution are the absence of Tarlok Singh from the house on the night on which Harjinder Singh was kidnapped, refusal of the father to accept the dead body of Harpreet Kaur after the postmortem, not attending the cremation ceremony, the disclosure statement, recovery of kappa and tractor trolley.

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(20) If the prosecution case is based on circumstantial evidence then three conditions must be satisfied: (i) the circumstance must be cogently and firmly established (ii) the circumstance should be of definite tendency unerringly pointing towards the guilt of the accused (iii) the circumstance taken cumulatively should form the chain so complete that there is no escape from the conclusion that the crime was committed by the accused.

(21) In ***Sharad Birdhi Chand Sarda v. State of Maharashtra(1)***, the Hon'ble Supreme Court had held 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.”

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:*

(1) AIR 1984 SC 1622

“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.”

(22) In case depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion howsoever so strong cannot be allowed to take the place of proof. The court has to be watchful and ensure that conjectures and suspicion do not take place of legal proof for sometimes unconsciously it may happen to be a short step between moral certainty and legal proof. The Court has to satisfy itself that the various circumstances in the chain of evidence should be completely established and there is no likelihood of the offence being committed by someone else.

(23) In the instant case, the prosecution witnesses had deposed that the complainant had received a call that his son had been kidnapped by Tarlok Singh and his associates. The boy did not return home that evening. The parents started the search and contacted the police. The most important circumstance would have been the person who had

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provided this vital piece of information . The police did not collect any evidence relating to the call that night. Neither the call details nor the name of the person, who had provided this information had surfaced in the statement of the complainant or his son. The important link in the chain of evidence is missing.

(24) The next circumstance set up by the prosecution is that the police party along with the complainant had gone to the house of the accused but he was not there. Mere absence from the house is not enough. It may create a doubt and point the needle of suspicion towards him but nothing more than that. It can be a crucial circumstance but the prosecution failed to find further lead in the case. Another circumstance set up by the prosecution was that the appellant did not take the body of his daughter nor attended the cremation. This is a important circumstance and points the needle of suspicion towards him and it goes to show that he was not happy with his daughter's affair and nothing more.

(25) The dead bodies were not recovered at the instance of the accused. This fact has been admitted by the prosecution witnesses. The prosecution had set up another circumstance, which according to them was crucial, that is the disclosure statement suffered by the accused, which led to the recovery of kappa. The kappa was said to have been used to eliminate the children. The kappa was sent for detection of blood but the FSL report did not support the prosecution. No blood was found. The prosecution was only able to prove that Harpreet Kaur had died on account of injuries. Her trachea had been cut. There was an incised wound in front of the neck, which in the opinion of the medical officer was sufficient to cause death. In the case of Harjinder Singh, the opinion was held back to await the report of the Chemical Examiner. The doctor did not find any poison. The hands and feet of Harjinder Singh were found tied when his body was recovered. His death was on account of asphyxia as a result of ante mortem drowning.

(26) The complainant admitted that the tractor trolley was in the house and it was taken to the police station in the morning of 10.07.2007 but the case set up by the prosecution is that Tarlok Singh made a disclosure and got the tractor trolley recovered from the house.

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This is a major contradiction. The recovery therefore becomes doubtful. No scientific investigation was carried out. The prosecution was unable to prove that there was any blood stains in the trolley. There was no circumstance, which could connect the accused to the crime. The police was unable to find any crucial circumstance to establish the guilt of the appellant.

(27) Sometimes the police is unable to find direct evidence but they can bring indirect circumstances, which may vary from suspicion to certitude but the Court has to bear in mind a caution that there can always be a danger and suspicion alone cannot take place of proof.

(28) Giving our thoughtful consideration to the circumstances, we find that the prosecution had failed to bring crucial circumstances and there is no link in the circumstances set up by them and they had failed to establish the guilt of the accused beyond reasonable doubt. We are conscious that a grave and heinous crime was committed but there is no satisfactory proof of the guilt. We have no option but to give the benefit of doubt to the accused and we are constrained to do so in this case. Accordingly, the appeal is allowed. The conviction and sentence of the accused is set aside and he shall be set at liberty forthwith if not required in any other case.

J.S. Mehndiratta

*Before Sanjay Kishan Kaul, Chief Justice &
Augustine George Masih, J.*

ABHEYJIT SINGH AND ANOTHER—Petitioners

versus

**CHANDIGARH ADMINISTRATION, CHANDIGARH AND
OTHERS—Respondents**

CWP No. 20636 of 2013

September 18, 2013

*Constitution of India, 1950 - Arts. 14 and 226 - Education
Laws - Centralized Admission Brochure Session 2013 - Clause B(I)(2)
- Medical admission under State Quota seats - Petitioners had
undertaken their 10+2 educational qualifications at Patiala, which*