

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 578 OF 2012**

Sumit Brijbihari Giri  
Age 34 years, R/o. Sukhshanti  
Society, Row House No.1,  
Sector 8, Airoli, Navi Mumbai  
District Thane.

...Appellant

V/s.  
The State of Maharashtra

...Respondent

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Mr. Ashish Raghuvanshi, for the Appellant.

Mrs. Prajakta P. Shinde, A.P.P. for the Respondent / State.

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**CORAM : PRASANNA B. VARALE AND  
SHRIKANT D. KULKARNI, JJ.**

**DATE : 15 JUNE 2022**

**Oral Judgment (Per Shrikant D. Kulkarni, J.)**

. The Appellant who is convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC) and sentenced to suffer imprisonment for life and fine of Rs.5,000/- and simple imprisonment for six months under Section 309 of IPC and fine of Rs.3,000/- with a default stipulation, in the event of non payment of fine, by the Second Additional Sessions Judge,

Thane, in Sessions Case No.287/2008 by judgment dated 2 May 2012, this Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) questions the correctness of the conviction and the sentence.

2. The prosecution story can be unfolded as under-

Police Station Rabale received information on 20 March 2008 about 9.10 p.m. that Room No.302 of Aniket Lodge is locked from inside and light is switched off, there is no response from inside, inspite of repeated calls and knocks on the door. After receiving the information, Sr. PSI Dubal with his colleagues PSI More, PSI Bhong and PSI Kadam and police staff rushed to Aniket Lodge. They went to Room No.302 and knocked on the door but no response from inside. An attempt was also made by using bell but it went fruitless. The door of the said room was closed from inside. The police officers with the help of staff of Aniket Lodge forcibly pushed the door and bolt was broken and door was opened. In Room No.302, one male and one female in unclothed condition were found. Both of them were injured. One knife with blood stains was lying on the bed. One diary was also found wherein it was mentioned that he (Accused) is responsible for the death of Samantha and he himself. It was also stated in the diary that Samantha was cheating him for last five years. The police officers made arrangement of Ambulance. Both injured were taken to N.M.M.C. Hospital at Vashi. Doctor

examined injured female and declared her dead. Male injured was found alive. Doctor further informed that the injured male has consumed poisonous substance. On making inquiry, name of deceased was revealed as Samantha Fernandes and name of the male was Sumit Brijbihari Giri (Accused / Appellant).

3. On the basis of initial material gathered at the scene of offence, PSI Gavli lodged FIR on behalf of State on the very day against the Accused. On that basis, Crime No.131/2008 under Section 302 and 309 of IPC came to be registered at Rabale Police Station. The investigation of crime was entrusted to P.W.19 PI More. PI More prepared the panchanama of the scene of offence and seized certain articles from the scene of offence. The specimen handwriting / signature of the Accused were taken under panchanama. The seized muddemal property including knife and clothes of the deceased and injured Accused were sent to Chemical Analyst for chemical analysis and report. During the course of investigation, PI Mr. More recorded statements of witnesses including owner of the Aniket Lodge, two managers, waiters and parents of deceased Samantha. He collected Post Mortem notes and cause of death certificate. The Investigating Officer Mr. More found sufficient incriminating evidence against the Appellant / Accused which resulted in filing of chargesheet under Section 302 and 309 of IPC. The case was committed to the Court of Sessions at Thane for trial.

4. The Additional Sessions Judge, Thane framed the charge against the Appellant / Accused for the offence punishable under Section 302 and 309 of IPC. The trial was commenced. The prosecution machinery has examined in all 19 witnesses.

5. The statement of Accused under Section 313 of Cr.P.C. came to be recorded. It was defence of the Accused that he is not author of murder of Samantha. Late Samantha was his girlfriend. He and Samantha were in the room of the lodge when Samantha received call from her mother about 4.15 p.m. After receiving the call, Samantha informed him that they have to leave the lodge within 15 minutes. He asked Samantha to get dressed up. He left the room to arrange rickshaw about 6.20 p.m. to 6.30 p.m. After crossing 15 to 40 steps, he heard shouts of Samantha and therefore, he rushed back. He witnessed that three persons were assaulting to Samantha. He tried to intervene but they started assaulting him. Two persons had put mask on their faces. Those persons had stolen away his laptop. According to Accused, staff members of Aniket Lodge are involved in the murder of Samantha but due to influence of owner of the hotel, police falsely implicated him in the case of murder of Samantha.

6. The learned Additional Sessions Judge after appreciating the evidence of prosecution witnesses, considering the arguments advanced by the learned APP and defence counsel arrived at

conclusion that prosecution machinery has proved the charge of murder against the Appellant / Accused beyond reasonable doubt. The learned Additional Sessions Judge further recorded finding that the prosecution has also proved that the Appellant / Accused had attempted to commit suicide by causing self inflicting injury and consuming poison.

7. Heard Mr. Ashish Raghuvanshi, learned counsel for the Appellant / Accused and Ms. Prajakta Shinde, learned A.P.P. for the Respondent / State. Perused the original record, with the assistance of learned A.P.P. and learned counsel for the Appellant / Accused. We have also gone through the evidence of prosecution witnesses as well as documentary evidence relied upon by the prosecution agency.

**Submissions of learned counsel for the Appellant / Accused**

8. Mr. Ashish Raghuvanshi, learned counsel for the Appellant / Accused submitted that the case in hand is entirely rest upon circumstantial evidence. There is no direct evidence. The prosecution machinery has failed to establish the chain of circumstances. He submitted that when the chain of circumstances is not established by the prosecution, Accused is liable to be acquitted by giving him benefit of doubt. He submitted that the burden is on the prosecution to establish the

chain of circumstances. In support of argument, Mr. Raghuvanshi has placed his reliance in case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***<sup>1</sup>.

9. Mr. Raghuvanshi, learned counsel for the Appellant / Accused submitted that the prosecution machinery has failed to prove the motive for causing murder of Samantha. He submitted that Samantha and the Appellant were close friends. They were about to marry. There was no reason for the Appellant to commit her murder. He submitted that the Appellant has been falsely implicated in this case at the instance of hotel owner. The Appellant is not the author of murder of Samantha but somebody else as per the defence of Appellant. The Investigating Officer has not carried out independent investigation to find out who is the author of murder of Samantha.

10. Mr. Raghuvanshi submitted that the Appellant has given explanation regarding injuries found on the person of Samantha and thereby discharged his burden contemplated under Section 106 of the Evidence Act. He submitted that even though that explanation is found to be false, it cannot be used as a link to complete the chain. To buttress the submission, Mr. Raghuvanshi has placed his reliance in case of ***Shivaji Chintappa Patil Vs. State of Maharashtra***<sup>2</sup>.

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1 (1984) 4 SCC 116

2 (2021) 5 SCC 626

11. Mr. Raghuvanshi, learned counsel for the Appellant submitted that motive assumes great significance in a case based upon circumstantial evidence. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence, the case of prosecution must be discarded. At the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the Accused.

12. Mr. Raghuvanshi, learned counsel for the Appellant has placed his reliance in case of *Nandu Singh Vs. State of Madhya Pradesh (Now Chhattisgarh)*<sup>3</sup>.

13. Mr. Raghuvanshi submitted that according to the prosecution case, murder has taken place in Room No.302 which is adjacent to the reception counter. Soon after attack, Samantha might have raised shouts so as to save herself but no such attempt on her part. It is difficult to accept that such incident could go on unheard or unnoticed though room is locked from inside. This story of prosecution is highly suspicious and the Investigating Officer has not made any attempt to remove that doubt. Mr. Raghuvanshi pointed out that testimony of the parents of the deceased indicate that deceased had cordial relations with the Appellant / Accused and it is difficult to digest that Appellant had committed murder. He submitted that prosecution has failed to

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<sup>3</sup>in Criminal Appeal No.285/2022 arising out of Special Leave Petition (Crl.) No(s). 7998/2021 dated 25 February 2022

prove its case beyond reasonable doubt. The Appellant / Accused needs to be acquitted.

**Submissions of learned A.P.P.**

14. Per contra Mrs. Prajakta Shinde, learned A.P.P. for the Respondent / State vehemently submitted that the prosecution has established the chain of circumstances by examining the important witnesses. There was affair between the Appellant and the deceased. Out of affair, the Appellant had committed murder of his fiancée by taking doubt about her loyalty. It was a murder in a closed room committed by the Appellant. It was his pre-plan. He was armed with weapon. He has executed his plan of causing murder. He has inflicted 19 injuries on the person of Samantha resulting into her instant death. It was a gruesome murder of a helpless girl. The Appellant / Accused needs to give explanation under Section 106 of the Evidence Act as to how his girlfriend sustained such 19 injuries when both of them were alone in the room of Aniket Lodge. The explanation offered by the Appellant / Accused is found to be false. The weapon used by the Appellant in commission of the offence of murder has been recovered. The Appellant had also attempted to commit suicide by causing self inflicting injuries and by taking poison. The prosecution machinery has examined two Doctors and accordingly proved its case beyond reasonable doubt. It is none else but the Accused who had committed murder of his fiancée



Samantha.

15. Mrs. Shinde, learned A.P.P. submitted that the findings recorded by the learned Additional Sessions Judge are in consonance with the evidence on record. There is no merit in the appeal.

16. We have considered the arguments advanced by the learned counsel for the Appellant / Accused and learned A.P.P. for the Respondent / State. We have also gone through the stock of citations relied upon by the learned counsel for the Appellant as well as written notes of argument.

17. The prosecution agency has examined in all 19 witnesses to prove the charge against the Appellant / Accused which can be classified as under.

(i) P.W.1 - PSI Shivraj Laxman Gavli who is first informant vide Exh.75.

(ii) P.W.2 - Mr. Jagdish Narayan Shelke, Day Manager of the Aniket Lodge vide Exh.80.

(iii) P.W.3 - Mr. Ravi Soma Suvarna, night duty hotel Manager vide Exh.96.

(iv) P.W.4 - Mr. Dhananjay Tatu Hongere, waiter of Aniket Lodge vide Exh.97.

(v) P.W.5 - Mr. Ramesh Meghnath Patil, panch

witness in respect of seizure of clothes of Accused, mobile handset and aluminum bottle vide Exh.100.

(vi) P.W.6 – Mr. Jogendraprasad Sarvajeet Sharma, panch witness on the scene of offence vide Exh.103.

(vii) P.W.7 – Mr. Santosh Prabhakar Rodekar, Police Havaldar vide Exh.109.

(viii) P.W.8 – Mr. Pramod Ratnakar Shirke, Police Naik vide Exh.110.

(ix) P.W.9 – Mr. Raju Ravji Takir, waiter of Aniket Lodge vide Exh.111.

(x) P.W.10 – Shreekant Narayan Mhatre, owner of Aniket Lodge vide Exh.112.

(xi) P.W.11 – Mr. Ramakant Narayan Mhatre, brother of owner of Aniket Lodge vide Exh.115.

(xii) P.W.12 – Mr. Arthavio Salino Fernandis, father of deceased vide Exh.116.

(xiii) P.W.13 – Ms. Fatima Arthavio Fernandis, mother of deceased vide Exh.117.

(xiv) P.W.14 – Dr. Bhushan Vilasrao Jain, vide Exh.119 Medical Officer who has conducted autopsy on the dead body of Samantha and issued Post Mortem report.

(xv) P.W.15 – Dr. Sandeep Dattatraya Vhatkar, Medical Officer who has examined the Accused vide Exh.122.

(xvi) P.W.16 – Dr. Prakash Jagdishchandra Sharma vide Exh.136, Surgeon and Urologist attached to Naval

Hospital, Ashwini Colaba Mumbai.

(xvii) P.W.17 – Mr. Sayaji Khashaba Dubal, Sr. PI attached to Rabale Police Station and author of Inquest Panchanama of the dead body of deceased Samantha vide Exh.139.

(xviii) P.W.18 – Mr. Mohan Raghunath Katkar, PSI who prepared panchanama of clothes of Accused vide Exh.142.

(xix) P.W.19 – Mr. Prakash Shankarrao More, Investigating Officer vide Exh.143.

18. Apart from above referred stock of oral evidence, the prosecution agency has also pressed into service documentary evidence which are as under.

- (i) FIR vide Exh.76.
- (ii) Seizure panchanama of clothes and mobile handset vide Exh.82.
- (iii) Inquest panchanama of the deceased vide Exh.77.
- iv) Panchanama of clothes of Accused vide Exh.101.
- v) Panchanama of scene of offence vide Exh.104.
- (vi) Post Mortem report Exh.91.
- (vii) Medical certificate of Accused vide Exh.123.
- (viii) Medical opinion given by Dr. Prakash Sharma vide Exh.137.
- (ix) FSLA report vide Exh.93 & 95.

19. We have carefully gone through the evidence of above referred stock of prosecution witnesses coupled with documentary evidence referred above.

20. During the course of argument, Mr. Ashish Raghuvanshi, learned counsel for the Appellant / Accused has been fair enough to admit that it is a case of homicidal death. Samantha met with homicidal death. He is however disputing the author of the murder. As such, there may not be any difficulty to accept that Samantha met with homicidal death. However, it would be necessary to have a look on the injuries found on the person of Samantha at the time of autopsy, to confirm nature of death.

### **Medical Evidence**

21. P.W.14 Dr. Bhushan Jain who has conducted autopsy on the dead body of Samantha is examined by the prosecution vide Exh.119. He has noticed following injuries on the dead body of Samantha while conducting post mortem which are described in column No.17 of the Post Mortem report which are as under-

- (i) Cut throat injury seen over left side of the neck on middle (1/3) region horizontally placed, tapering at the end situated at the distance of 8.5 cm. from sternal notch 9 cm from chin. It is of size 12 x 3.5 cm. muscle deep alongwith 2 cm tailing on right side lateral to midline, reddish.

- (ii) Stab injury (S.I.) seen over right side of the neck lower (1/3) region medial to sterno-cleido mastoid muscle-anteriorly of size 1.5 cm x 1 cm, 2.5 cm deep, reddish.
- (iii) S.I. over right side of the neck 3 cm above injury No.2 on sterno-cleido-mastoid muscle of size 1 x 0.5 cm, 1 cm deep, reddish.
- (iv) S.I. over right Supra-clavicular region 1, 0.5 cm, 2 cm deep, reddish.
- (v) Abrasion over left side of the neck below injury No.1.5 x 3 cm reddish near midline.
- (vi) S.I. seen over upper border of left clavicle situated at the distance of 5 cm from sternal notch of size 2 x 0.5 cm directing obliquely downwards medially.

On dissection cutting skin, subcutaneous tissue, muscles piercing internal jugular vein, tent seen reddish.

- (vii) S.I. over left chest situated at the distance of 9 cm from sternal notch and 4 cm lateral to midline of size 2 x 1 cm cavity deep, directing anteriorly forwards, reddish.

On dissection, passing through skin, subcutaneous (S.C.) tissue, muscles, cutting 4<sup>th</sup> cartilage, piercing pleura and upper lobe of left lung anteriorly, track hemorrhagic.

- (viii) S.I. over epigastric region of abdomen on left side situated just below costal region and 2 cm from midline.

It is of size 1.5 cm x 1 cm cavity deep, directing obliquely, upwards, medially, reddish.

(ix) S.I. over left side of the abdomen in subcostal region situated at the distance of 7 cm above umbilicus and .5 cm lateral to midline. It is of size 2 x 1 cm cavity deep with 2 cm tailing on upper end, directing obliquely, upwards, medially reddish.

(x) S.I. over right side of the abdomen near midline situated at the distance of 7 cm above umbilicus and 1 cm lateral to midline. It is of size 3 x 1 cm cavity deep, directing obliquely towards left reddish.

(xi) Linear abrasion over left thigh middle region antero-medially of length 6 cm, reddish.

(xii) Incise wound (I.W.) over left thigh, middle region, laterally of size 9 x 2 cm muscle deep with 1 cm tailing at lower end, reddish.

(xiii) Linear abrasion over left left laterally of length 4.5 cm reddish.

(xiv) Two linear abrasion seen over left forearm flexor aspect near elbow joint of length 5 cm each, reddish.

(xv) Abrasion over left Forearm above wrist joint flexor aspect 2 x 1 cm, reddish.

(xvi) Tiny abrasion seen over dorsum of left hand in an area of 5 x 4 cm reddish.

(xvii) Abrasion seen over left index finger, proximal

phalynx, laterally and left middle finger distal phalynx laterally of size 1.5 x 0.5 cm and 0.5 x 0.5 cm respectively, reddish.

(xviii) I.W. seen over left elbow joint postero-laterally of length 4.5 cm. Skin deep reddish.

(xix) I.W. over right palm in the web of thumb and index finger of size 1.5 x 5 cm. Skin deep alongwith 3 cm tailing over dorsum of hand, reddish.

All the injuries were ante mortem.

22. On internal examination, Dr. Bhushan Jain found following injuries.

On internal examination:-

Brain matter was pale and oedemaous.

Thorax :- Cut fracture seen over 4<sup>th</sup> cartilage on left side in relation to injury No.7 in column No.17. Infiltration staining of blood seen at the fractured margins.

Pleura :- Cut in relation to above injury.

Cavity contains 2000 cc bloods.

Right lung :- Pale and oedematous.

Left Lung :- Shown injury in relation to injury No.7 in column No.17.

Abdomen :- Injury No.8, 9 and 10 in column No.17 are

co-related with the internal injury on abdomen.

Stomach contents :- 50cm semi digested indistinguishable food material with scanty carret particles. No abnormal smell present. All internal organs were pale.

### **Opinion about cause of death**

23. Dr. Bhushan Jain has given cause of death in this case. According to Dr. Bhushan Jain, cause of death of Samantha was due to Heamorrhage and shock due to multiple injuries. Dr. Jain also expressed his opinion after perusing knife / weapon that injury No.5, 15, 16 and 17 mentioned in column No.17 can be caused by this article knife. The medical evidence referred above pertaining to the injuries found on the person of Samantha and opinion about cause of death is not anyway disputed by the defence counsel while initiating the cross examination of Dr. Jain.

24. Having regard to the above referred stock of medical evidence, it is very much clear that Samantha met with homicidal death. The cause of death given by Dr. Jain needs to be accepted in view of nature of multiple injuries found on the dead body of Samantha and the weapon / knife used while inflicting the injuries.

25. Important question poses who is author of murder of Samantha.



26. It is interesting to note that the Appellant / Accused is not disputing that on the day of incident he had booked Room No.302 in Aniket Lodge at Rabale Naka, Navi Mumbai. He is admitting that he had affair with Samantha who happened to be his girlfriend. Both were dating since long time before the incident. Family of Samantha was also knowing about the affair of Samantha with the Appellant / Accused. On the day of incident about 9.30 p.m., staff of Aniket Lodge noticed that no response inspite of knocking on the door of Room No.302 as well as no response to the call bell, they intimated to the police. Police arrived at Aniket Lodge and forcibly opened the door of Room No.302 and found Samantha and Appellant / Accused in injured condition. Samantha was lying in pool of blood and in unclothed condition. Both of them were taken to the hospital immediately where Samantha was declared dead. In this admitted scenario, we have to find out who is the author of murder of Samantha. Is he Accused or someone else ? as per the explanation offered by the Appellant / Accused while his examination under Section 313 of Cr.P.C.

**Evidence of Police Officers who rushed to Aniket Lodge soon  
after receiving information**

27. On going through the evidence of police officers who have rushed to Aniket Lodge soon after receiving information is important. P.W.1 PSI Shivraj Gavli, P.W.7 Police Havaladar

Santosh Rodekar, P.W.8 Police Naik Pramod Shirke, P.W.18 PSI Mohan Katkar, throws light on the question of author of murder of Samantha. They have stated consistently in their respective testimony that after receiving the information from Aniket Lodge on 20 March 2008 about 9.00 p.m., they rushed to Aniket Lodge. They found that Room No.302 was locked from inside. There was no light burning in Room No.302 and no response from inside inspite of giving call bell and knocks on the door. They forcibly opened the door. The bolt was broken. They switched on the light and found that one female lying in unclothed condition and one male. Both of them were injured and lying in pool of blood. One knife was also found there. Both the injured were taken to N.M.M.C. Hospital at Vashi where Samantha / (female) was declared dead. Much was argued by learned counsel for the Appellant / Accused that no occupant of other rooms was examined by the prosecution as an independent witness and thereby raised question mark on impartial investigation. We do not find any merit in the argument advanced by the learned counsel for the Appellant / Accused. The prosecution machinery has examined owner of Aniket Lodge, his brother, two managers and waiters which indicates that the prosecution has succeeded to bring on record the truth by examining all the relevant and material witnesses.

28. The learned counsel for the Appellant attempted to divert the focus of the case by pointing out the explanation offered by

the Appellant / Accused while recording statement under Section 313 of Cr.P.C. The explanation offered by the Appellant / Accused probably to save from clutches of Section 106 of Evidence Act, is very much interesting which is reproduced hereunder, which is in his own handwriting on a separate page annexed with the statement recorded under Section 313 of Cr.P.C.

*"I want to make submission, as under-*

*Approx. at 6.15 on 20/03/2008, when I and Samantha where together at said lodge, she received a call, which was of her mother, on mobile, she told me that we need to leave within 15 min. as she had informed her mother, so I asked her to get dressed up, in the meanwhile I would fetch a Auto, so I came out of room may be around 6.20 p.m. to 6.30 p.m., and walked out of said lodge. I walked around 15-20 steps, I heard Samantha shouting then I rushed towards the said room I saw 3 person, assaulting her the moment I entered room in question and I tried to stop whose people they started assaulting me and within few min. some liquid was poured / forced down my throat, which caused burning sensation, after that what happened I don't know out of whose three people who assaulted both of us 2 were covering these face's.*

*They may be staff of Aniket Lodge. When I was conscious at hospital, I asked my father about what happened to Samantha, then I got the shocking news of her death, which was unbearable for me, the next day after her death came to my knowledge I asked my father about my laptop, which contained my study material and other important personel data, my father told me he would enquire about the same in police station, after 2 to 3 days my father informed me that police personnel's at Rabale are not aware of any laptop, when we booked that room the laptop was within my laptopbag, that laptop were stolen by person's who attacked me and Samantha. When father tried to lodge complain about stolen laptop police didn't lodged any complaint regarding the same laptop, because the owner of said lodge "Aniket Lodge" Mr. Ramakant Mathre is was Dy. Mayor at Navi Mumbai and he is highly powerful influensive person and due to his influence in Rabale police station the police didn't took any complaint about stolen laptop of mine.*

*And Ramakant Mathre doesn't wanted any defamation on his reputation and blame on his staff member's, so police in this case were not taking any complaint regarding stolen laptop.*

*Your honour me and Samantha were together for past 5½ year's as of on 20/03/2008 and were about to marry on my birthday which was falling on 27/04/2008, had both family didn't had any problem with our marriage. So your honour no question arises of, me harming Samantha. I loved her, and she loved me Your honour. Mr. Ramakant Mathre with the help of police tried to implicate me for portecting his staff and reputation of himself and the lodge.*

*Your honour I am innocent and falsely implicated in present offence. I pray for your mercy."*

29. We have also considered the explanation offered by the Appellant / Accused in view of Section 106 of the Evidence Act. In case of *Shivaji Chintappa Patil (Supra)*, it is held by the Hon'ble Supreme Court that it is well settled principle of law, that false explanation or no explanation can only be used as additional circumstance, when the prosecution has proved chain of circumstances leading to no other conclusion than the guilt of the accused. However, it cannot be used as a link to complete the chain.

30. There is no direct evidence against the Appellant / Accused. The case is entirely rest upon circumstantial evidence as rightly argued by learned counsel for the Appellant.

31. In case of ***Sharad Birdhichand Sarda (Supra)***, the Hon'ble Supreme Court has laid down the following guidelines when case against the Accused is based upon circumstantial evidence.

(i) *the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established.*

(ii) *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,*

(iii) *the circumstances should be of a conclusive nature and tendency,*

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

(v) *there must be 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.*

32. In a case based on circumstantial evidence, motive plays an important role and the prosecution has to prove the motive. In the light of principles laid down by the Hon'ble Supreme Court in the case of *Sharad Birdhichand Sarda (Supra)*, we have to examine the case in hand. As discussed hereinbefore, the prosecution has proved that Appellant / Accused had booked Room No.302 in Aniket Lodge at Rabale Naka. The Appellant and Samantha were alone in the Room No.302. The door of Room No.302 was broken by using force of the police officials by taking aid of lodge staff and found after switching on the light that deceased Samantha and Accused were lying in injured condition in pool of blood. They were taken to N.M.M.C. Hospital at Vashi for treatment where Samantha was declared dead. Medical treatment was provided to the Appellant / Accused and shifted to Naval Hospital for further line of treatment where his life was saved.

33. The prosecution machinery has examined two Managers of Hotel Aniket Lodge and two waiters who have consistently stated the factual scenario stated above. Their evidence is trustworthy and reliable. No material is brought on record by way of their cross examination to support the defence story regarding theft of laptop by entering into Room No.302 and that too by assaulting the Appellant and his fiancée Samantha. For the sake of moment, the argument of learned counsel for the Appellant is accepted

about case of theft of laptop, there was no difficulty for the Appellant / Accused to disclose such fact before the concerned J.M.F.C. when he was first time produced for remand. The Appellant's father could have lodged complaint with police station by giving all the details and producing purchase receipt of the laptop. No such action from the side of Appellant / Accused.

34. It is very important to note that Room No.302 was locked from inside when police reached there after receiving information. The door of Room No.302 was forcibly opened by police with aid of hotel staff. This rules out entry of any other person in Room No.302. It has uprooted the defence. Moreover, the Investigating Officer P.W.19 Sr.P.I. Mr. More has also ruled out involvement of any other person in crime except the Accused. The learned counsel for the Appellant / Accused has raised question about investigation since shirt of the Appellant / Accused is not seized in this case. It is not any way fatal to the prosecution case when the Accused himself came out with a defence that both were alone in the Room No.302, on the date of incident. The explanation of attack on him and his girlfriend by unknown three persons found to be bundle of false. So far liquor bottle found in the room but no investigation is conducted, again we do not find any force. It is not the case of prosecution that Accused under influence of liquor committed murder of his girlfriend. Equally, it is also not the defence of Accused. As such,



it is not anyway damaging to the prosecution case.

35. Now coming to evidence of parents of the deceased Samantha, P.W.12 Arthavio Fernandis and P.W.13 Fatima Fernandis happened to be father and mother of deceased. We have gone through testimony of P.W.12 Arthavio Fernandis and P.W.13 Fatima Fernandis vide Exh.116 and 117 who are parents of the deceased Samantha. Both of them consistently stated during their evidence that their daughter Samantha had affair with the Appellant / Accused. They were dating since long time. It is further evident from their testimony that they had no objection about the friendship between their daughter Samantha and the Appellant / Accused. As such, there was no opposition from the side of parents about such friendship. It is nowhere suggested to the parents that Samantha had another boy friend, due to which the Appellant / Accused had grudge in his mind. It is nowhere suggested that Samantha was dating to another boy friend and the Appellant / Accused at the same time. No such defence was put forth to both the parents during their cross examination. In this background, it can be safely be said that Samantha had no other boy friend except the Appellant / Accused with whom she was seriously involved.

36. In the above premise, evidence of parents extend support to the prosecution case.

37. Much was argued by the learned counsel for the Appellant / Accused that there was no hue and cry from the deceased when alleged attack was made and it is difficult to accept the story of the prosecution that in silence crime was committed. We do not find any force in the submission of the learned counsel for the Appellant / Accused. As pointed out earlier, there were 19 external injuries on the person of deceased Samantha. The first injury was cut throat injury over left side of the neck on middle (1/3) region horizontally placed, tapering at the end situated at the distance of 8.5 cm. from sternal notch 9 cm from chin. It is of size 12 x 3.5 cm. muscle deep alongwith 2 cm tailing on right side lateral to midline, reddish. If this injury No.1 referred above, is considered coupled with other circumstances, it can be inferred that no chance seems to have given to the deceased to raise hue and cry for help. As soon as injury No.1 was inflicted, there was no scope for the deceased in view of cut throat injury to the neck which is on vital part relating to the vocal cord. Even though, location of Room No.302 of Aniket Lodge is close to the reception counter, in view of vital injury No.1 caused to the deceased, no chance was given to the deceased to raise such hue and cry for help. If this particular aspect is taken into consideration, even if hotel manager was there at reception counter, it was of no help.

38. Now coming to another important defence raised by the learned counsel for the Appellant / Accused. Mr. Raghuvanshi, learned counsel for the Appellant / Accused vehemently submitted that alleged suicide note written by Appellant / Accused is not on record. The copy of alleged suicide note is on record which is not accepted by the trial Court. In this background, the story projected by the prosecution that Appellant / Accused after making assault on the deceased attempted to commit suicide by causing self inflicting injuries. In this regard, we have perused para Nos.17 to 26 of the impugned judgment. It appears from the evidence of P.W.1, P.W.17 and P.W.19 that alleged suicide note was seized by P.W.19 on 10 April 2008 under the panchanama which is on record at Exh.152. Unfortunately, the prosecution has failed to place on record the original suicide note with report of handwriting expert. The learned Additional Sessions Judge has rightly discarded the photocopy of the suicide note Article 'A' in the above scenario. The view taken by the learned Additional Sessions Judge is found correct.

39. Be that as it may, the evidence of P.W.16 Dr. Prakash Sharma, Surgeon and Urologist, attached to Naval Hospital, Ashwini, Mumbai vide Exh.136 is crucial regarding attempt made by the Appellant / Accused to commit suicide. The testimony of P.W.16 Dr. Prakash Sharma gives picture that at the relevant point

of time he was working in Naval Hospital as Surgeon and Urologist. On 21 March 2008, Dr. Sharma has examined the Appellant / Accused Sumit Giri. The Appellant / Accused was admitted as his father was a E.C.H.S. member and the Appellant / Accused was entitled to take treatment in the Naval Hospital. On going through the evidence of Dr. Sharma, it further reveals that the initial treatment was given to the Appellant / Accused at Civil Hospital and thereafter he was referred to Naval Hospital for further line of treatment. Dr. Sharma has disclosed that the Appellant had superficial wounds (i) left wrist (ii) left side of neck (iii) multiple stab wounds on the abdomen near the umbilicus. According to Dr. Sharma, abovesaid three injuries were in the nature of self inflicted injuries. The Appellant / Accused was admitted in surgical I.C.U. Ward and after treatment he was discharged from Naval Hospital on 25 March 2008 and handed over to the police.

40. The injury certificate is also placed on record vide Exh.137 which is duly proved at the hands of Dr. Sharma. Dr. Sharma has further opined that injuries found on the person of Appellant / Accused may be possible by knife shown to him as Article No.9. While facing the cross examination, Dr. Sharma has admitted that in none of the documents it is mentioned by him that the injuries were self inflicted injuries. Even though, such fact of causing self inflicted injuries does not find place in the medical certificate

relating to the Appellant / Accused, the opinion given by the Expert cannot be simply discarded on that ground. P.W.16 Dr. Prakash Sharma is an Expert and working as Surgeon in Naval Hospital at Ashwini, Mumbai. The Appellant / Accused was taking treatment in the Naval Hospital at Ashwini, Mumbai and Dr. Sharma was the treating Doctor. This important aspect needs to be considered while accepting his opinion about causing self inflicted injuries found on the person of Appellant. Dr. Sharma also disclosed during his evidence that the Appellant / Accused had consumed poison, it was a case of Agro poisonous substance. Medical certificate issued by the Bombay Hospital vide Exh.138 is admitted by the defence Advocate. It clearly supports the opinion given by Dr. Sharma. The opinion given by the Doctor of Bombay Hospital also reveals that it was diagnosed case of Organic Phosphorous poisoning with c/o. Multiple stab wounds over the abdomen and neck. Therefore, it is clear that the Appellant / Accused had caused self inflicted injuries and secondly consumed poisonous substance only with a view to finish his life after causing gruesome murder of his fiancée Samantha.

41. Now coming to FSLA reports. The Chemical Analyst (CA) report vide Exh.93A is pertaining to vaginal swab of late Samantha. It is admitted by the Appellant / Accused and it is vide Exh.93A. As per results of the analysis, no semen was detected.

However, it is not anyway damaging to the prosecution case. The CA report vide Exh.93B is pertaining to viscera of late Samantha. The results of analysis indicate that no poison was revealed which is supporting to the cause of death of deceased falling in the category of homicidal death. The CA report vide Exh.93C is also admitted by the defence pertaining to nail clipping and scalp hair of late Samantha. The CA report vide Exh.93C indicates that human blood of A group was found on the nail clipping and scalp hair of the deceased, which strengthen the prosecution case. The CA report vide Exh.95 is pertaining to in all 29 muddemal articles which were sent for chemical analysis. On the following muddemal articles blood stains were found though some of the articles, chemical analysis do not indicate about exact blood grouping.

- . Ladies bag wrapped in paper labelled
- . Spectacles wrapped in paper labelled
- . Empty bottle wrapped in paper labelled.
- . Black bag.
- . Yellow bottle put in Exh.5, Exh.5, 6, 7 wrapped in paper labelled.
- . Ladies makeup purse containing cosmetics articles wrapped in paper labelled.
- . Cover of spectacles wrapped in paper labelled.
- . Monkey cap wrapped in paper labelled.
- . Cotton swab in a phial in an envelope labelled.

- . Scrapping in a phial in an envelope labelled.
- . Pieces of tiles wrapped in paper labelled.
- . Pair of ladies chapples wrapped in paper labelled.
- . Nail clipping put in an unsealed phial labelled Sumeet Giri put in an envelope labelled.
- . Hair put in an unsealed phial labelled Sumeet Giri put in an envelope labelled.
- . Kitchen knife stained with blood on blade and handle.

The C.A. report vide Exh.93C indicates that C.A. could not give opinion about blood group of deceased Samantha since blood sample was unsuitable for grouping. But it was human blood.

42. No satisfactory explanation is forthcoming from the side of Appellant / Accused about the blood stains found on the abovesaid muddemal articles which were seized in this case. Certain muddemal articles were seized from the scene of offence itself which had blood stains.

43. Having regard to the above stock of reports of chemical analysis, those are also supporting to the prosecution case in the nature of corroboration.

44. Now coming to another important aspect about motive to commit murder. Mr. Raghuvanshi, learned counsel for the Appellant / Accused has given much stress on this point by referring citation in case of ***Babu Vs. State of Kerala***<sup>4</sup> and ***Pannayar Vs. State of Tamil Nadu***<sup>5</sup>. In case of ***Babu*** (*supra*), it is held by the Hon'ble Supreme Court that when a case is based upon circumstantial evidence, the burden is always heavy on the prosecution. In a case of circumstantial evidence, absence of motive, in a case depending upon circumstantial evidence is a factor that weighs in favour of Accused.

45. Similar view is taken by the Hon'ble Supreme Court in ***Pannayar*** (*supra*).

46. In criminal jurisprudence, every accused is presumed to be innocent unless the guilt is proved in the eyes of law as pointed out earlier by referring the case of ***Sharad Birdhichand Sarda*** (*supra*). While dealing with case based upon circumstantial evidence, it has been held that the onus is on the prosecution to prove, the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by false defence or plea.

47. In case of ***State of Karnataka Vs. M. N. Ramdas***<sup>6</sup>, it is held by the Hon'ble Supreme Court that even if there is no satisfactory

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4(2010) 9 SCC 189

5(2009) 9 SCC 152

6(2002) 7 SCC 639



evidence, in respect of motive, it would not vitiate the prosecution case if other evidence sufficiently establish the guilt of the Accused. The motive is a thing which is exclusive within the knowledge of Accused. It is not possible for the prosecution to explain what actually prompted or excited him to commit particular crime.

48. Keeping in mind, the above legal position made clear by the Hon'ble Supreme Court, in the above referred stock of citations, we have examined the case in hand. On careful analysis of the prosecution witnesses and documentary evidence as well, following circumstantial evidence has unerringly pointed out the participation and involvement of the Appellant / Accused in causing murder of his girlfriend / fiancée Samantha.

The following are the incriminating circumstances brought on record.

- (i) The Appellant / Accused had booked Room No.302 in Aniket Lodge on 20 March 2008.
- (ii) The Appellant and his girlfriend Samantha checked in the said room on 20 March 2008 about 2.15 p.m. or thereabout.
- (iii) The Appellant and his girlfriend Samantha (since deceased) were last seen together at reception of the hotel on 20 March 2008 in the afternoon.
- (iv) No response inspite of knocking on the door of

Room No.302 or giving call bell in the evening time though check out time was over.

(v) An information was given to the police by the hotel owner and police officials with staff rushed to the spot of Aniket Lodge.

(vi) The police officers with the help of staff attempted to open the door. When they failed to get any response from the occupant of Room No.302 inspite of giving repeated knocks on the door, they forcibly broke the door of Room No.302 and took entry in the room.

(vii) The Appellant and Samantha (since deceased) were found in injured condition. They were immediately taken to N.M.M.C. Hospital at Vashi, Navi Mumbai where Samantha was declared dead.

(viii) The weapon knife with blood stains was recovered and seized from the scene of offence.

(ix) Samantha met with homicidal death when she was in Room No.302 of Aniket Lodge with her boyfriend Appellant / Accused.

(x) The CA reports support to the prosecution case about blood stains found on the personal belongings of the deceased Samatha as well as her nail clipping.

(xi) The Appellant / Accused failed to give satisfactory explanation as to how his girlfriend was found dead when both of them were alone in Room No.302 of Aniket Lodge.

Thus, chain of circumstances is complete. The evidence on record is clear and unambiguous and the circumstances proved the guilt of Accused, the same is not weakened even if no satisfactory evidence about clear motive is brought on record in this case.

49. In case of *Trimukh Maroti Vs. State of Maharashtra*<sup>7</sup>, it is held by the Hon'ble Supreme Court that crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence, it does not mean that a crime committed in secrecy or inside the house should go unpunished. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of

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<sup>7</sup> 2007 Cri.L.J. 20

circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, 1872, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. In cases of no explanation or false explanation then the same becomes an additional link in the chain of circumstances to make it complete. The burden on the prosecution to prove its case is comparatively lighter character in view of Section 106 of the Evidence Act, 1872. In this case, the explanation given by the Appellant / Accused by way of his examination under Section 313 of Cr.P.C., is found to be bundle of false and it is found one more incriminating circumstance against him.

50. As discussed hereinabove, it is a case of gruesome murder of a girl at the hands of her boyfriend. Nineteen external injuries were found on the person of late Samantha which clearly indicates the way, the Appellant had planned to eliminate her from this earth. It was found to be a tragic death of girlfriend Samantha on that unfortunate day where the Appellant / Accused has booked a room and committed murder of his girlfriend Samantha by taking doubt that she is not loyal to him. We are in

agreement with the findings recorded by the learned Additional Session Judge, Thane. The learned Additional Sessions Judge has considered the defence raised on behalf of the Appellant / Accused in a proper way and rightly rejected the same by assigning the reasons.

51. The circumstances enumerated above unerringly points to the guilt of the Appellant and they are inconsistent with his innocence. The Appellant / Accused has also attempted to commit suicide after causing murder of his fiancée by causing self inflicting injuries and by consuming poison. The learned Additional Sessions Judge has rightly convicted the Appellant under Section 302 and 309 of IPC. We, therefore, do not find any merit in the Appeal.

### **ORDER**

- (i) The Appeal is dismissed.
- (ii) R & P be sent back to the Sessions Court as per rules and procedure.
- (iii) The Criminal Appeal is accordingly disposed of.

**(SHRIKANT D. KULKARNI, J.)**

**(PRASANNA B. VARALE, J.)**