



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07th JANUARY, 2026

IN THE MATTER OF:

+ **CRL.A. 174/2003**

VINOD S/O HANUMAN SHAH

.....Appellant

Through: Ms Aishwarya Rao and Mansi Rao
Advocates

versus

STATE

.....Respondent

Through: Mr. Aashneet Singh, APP for the
State with Inspector Yogendra

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present Appeal has been filed against the Judgment on Conviction dated 28.08.2002, and Order on Sentence dated 31.08.2002, respectively passed by the learned Additional Sessions Judge, New Delhi (*hereinafter referred to as "Trial Court"*) in Sessions Case No.45/1999, arising out of FIR No.803/1998, registered at Police Station Sultan Puri, under Section 302 of the Indian Penal Code, 1860 ("**IPC**"). By the Judgment on Conviction dated 28.08.2002, the Appellant herein was convicted for committing the murder of one Alok Kumar Beragi ("**Alok**"). By a separate Order on Sentence dated 31.08.2002, the Appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- and in default



of payment of fine, the Appellant has been directed to further undergo rigorous imprisonment for six months for the commission of the offences punishable under Section 302 of IPC.

2. The Appellant, being aggrieved by the Order of Conviction and Sentence passed by the learned Trial Court, has preferred the present Appeal.

3. Shorn of unnecessary details, the facts leading to filing of the present Appeal as stated in the Impugned Judgment are as follows:

- a) The prosecution's case, in brief, is that on 29.10.1998 at about 1:30 PM, S.K. Vishwas (PW-18) appeared at Police Station Sultan Puri and lodged a report with the duty officer.
- b) PW-18 stated that one Alok, resident of A-20, Hari Enclave, Sultan Puri, had been working as a Compounder at Chandsi Clinic of Dr. Pranab Vishwas (PW-9) at Hari Enclave, for the past two years. PW-18, further stated that on 28.10.1998 at about 9:00 PM, after finishing his dinner, when he proceeded towards the Clinic, he was informed that the deceased Alok had been found lying unconscious with some tablets scattered near him. Thereafter, on reaching the clinic, PW-18 found the deceased Alok unresponsive and immediately took deceased Alok to Chawla Nursing Home, where the doctor declared him "brought dead".
- c) Thereafter, the body of deceased Alok was taken to his residence at A-20, Hari Enclave, Sultan Puri.
- d) It is further stated that, DD No.18-A exhibited as Ex. PW-12/A was assigned to SI Tulsi Ram (PW-12), who, along with Ct. Babu Lal (PW-16), proceeded to the residence A-20, Suleman Nagar, Hari



Enclave. The clinic also operates from the same premises where the body of the deceased Alok was found lying on the floor in a room in his residence. PW-12 noted ligature marks on the neck and injury marks on the fingertips of the left hand and on the toes of both feet. Soon thereafter, SI Attar Singh, SI Vinay Singh and other police personnel also reached the spot. No eyewitnesses were available.

- e) Thereafter, PW-16 was left at the residence, and the other officers proceeded to Chandsi Clinic at F-6 Block, Jhuggi No.1318, Sultan Puri. Further inspection revealed that the clinic floor had been freshly cleaned and, again, no eyewitnesses were found. No tablets were recovered from the clinic.
- f) Thereafter, PW-12 made an endorsement on DD No.18-A exhibited as Ex.PW-12/A and sent it to the police station through PW-16 for registration of an FIR. PW-12 also requested that further investigation be entrusted to the SHO, special reports be sent to the area magistrate and senior officers, and the crime team and photographer be dispatched to the spot.
- g) The investigation was thereafter taken over by the Inspector, who inspected the scene, took photographs of the deceased Alok as well the Clinic, whereafter samples of blood-stained earth were collected. Further, statements of witnesses were recorded.
- h) During investigation, the site plan was prepared and exhibited as Ex.PW-2/A. Thereafter, on 07.11.1998, the Appellant was apprehended, and his disclosure statement was recorded and the same was exhibited as Ex.PW-9/B. Pursuant to his statement, the nylon rope allegedly used to commit the murder was recovered on the



pointing out of the Appellant and the same was exhibited as Ex.PW-9/C.

- i) Further, on 31.10.1998, the Post Mortem of the deceased Alok was conducted. The said Post Mortem Report bearing No.3418 was conducted at the Civil Hospital Mortuary, Subzi Mandi, Delhi by Dr. L.C. Gupta (PW-17) and the same was exhibited as Ex. PW-17/A. Further, the purported weapon was also sent for expert opinion and the same was exhibited as Ex.PW-20/G, while the other exhibits were forwarded to the FSL.
- j) Upon completion of the investigation, a charge-sheet under Section 302 of IPC was filed. Charges were framed against the Appellant, to which he pleaded not guilty and claimed trial.
- k) During trial, the Prosecution examined 21 witnesses while the Defence led no evidence.
- l) The Trial Court convicted the Appellant under Section 302 of IPC, holding that the prosecution had succeeded in establishing the commission of murder of the deceased Alok by the Appellant beyond reasonable doubt.
- m) The Trial Court noted that the prosecution's case is based entirely on circumstantial evidence. It reiterated the settled legal principle that in such cases, every incriminating circumstance must be proved cogently, independent evidence must be proved beyond reasonable doubt, and the circumstances so proved must form an unbroken chain, pointing unmistakably to the guilt of the Appellant, leaving no scope for any other hypothesis.
- n) The Trial Court further noted that the Prosecution sought to establish



the chain of events beginning with PW-7 handing over the key of the Chandsi Clinic on 28.10.1998 to one Raju, employed at a nearby shop known as Vishnu Dhaba. Thereafter, PW-21 handed over the same key to the deceased Alok, who, accompanied by the Appellant Vinod, proceeded to the clinic to sleep for the night. It was further observed that on the following morning i.e. 29.10.1998, PW-19 went to the clinic at around 7:00 AM and knocked at the shutter, but since it was locked from inside, he left the spot. Further, PW-5 and PW-6 claimed to have seen the Appellant emerging from inside of the clinic on the morning of 29.10.1998 while the body of the deceased Alok lay inside. It is also stated that the Appellant was subsequently arrested on 07.11.1998, and pursuant to his disclosure statement i.e. Ex.P-9/B, a nylon rope was recovered from garbage lying near the clinic. The rope was later sent for medical examination, and an opinion was rendered at point A of Ex.PW-20/G.

- o) The Trial Court considered the statement of PW-7 before the Court, wherein he stated that the police informed him that the Appellant had committed the murder – an assertion not found in his earlier statement under the Section 161 of CrPC. However the Trial Court limited the relevance of PW-7's testimony to the fact that on 28.10.1998, he visited the clinic, found neither his brother nor the deceased Alok present, closed and locked the shutter and handed the key to Raju. Therefore, the Trial Court was of the opinion that this forms part of circumstantial chain relating to events immediately preceding the alleged occurrence.
- p) The Trial Court also noted that PW-21 deposed that the Appellant,



after his meal, had asked permission to sleep at the Dhaba, which was declined. Whereas, he instead accompanied the deceased Alok, to whom PW-21 handed the clinic keys, and both proceeded towards the clinic to sleep. The Trial Court also noted that PW-21 unequivocally stated in examination-in-chief that he saw the Appellant and the deceased Alok entering the clinic together and that handing over the keys to the deceased Alok was regular practice. Therefore, this circumstance also stood established.

- q) The Trial Court was of the opinion that PW-19's inability to open the shutter of the clinic, which was found to be locked from inside on 29.10.1998 at about 7:00 AM despite calling Raju strengthens the inference that someone was inside the clinic at that time.
- r) The Trial Court considered the testimonies of PW-5 and PW-6 as crucial because both these witnesses stated that on the morning of 29.10.1998, they saw the Appellant– a rickshaw puller from the locality – opening the clinic shutter from inside and stepping out, while the deceased Alok, popularly known as “mama”, lay dead on a bench inside the clinic. Further, the Defence highlighted certain minor improvements recorded in the cross-examination, the Trial Court found that these did not detract from the core and consistent fact that the Appellant was seen exiting the clinic where the deceased Alok's body was found.
- s) The Trial Court further noted that another incriminating circumstance was the Appellant Vinod's arrest on 07.11.1998 and the recovery of a nylon rope pursuant to his disclosure statement. The Defence objected that no independent witnesses were present either at the arrest at



Nangloi Railway Station or at the recovery of the rope, which was found in an open area. The Trial Court, however, noted that as per the evidence of PW-12 and PW-20, the Appellant was arrested at around 5:00 AM when the railway station was deserted, making the availability of independent witnesses unlikely. The Trial Court further noted that as regards recovery, it was established that the rope was retrieved from garbage – a place not ordinarily accessible or frequented by the public – thereby not constituting an open place in the strict sense.

- t) The Trial Court also noted that the doctor, who submitted the medical opinion vide Ex.PW-20/G on the rope, opined that the ligature material (a plastic string of half-inch thickness) could have caused the strangulation. Further, the Trial Court noted that the Post Mortem Report i.e. Ex.PW-17/A recorded the cause of death as asphyxia due to ligature strangulation, sufficient in the ordinary course of nature to cause death, and that the doctor further confirmed that the ligature marks were consistent with the nylon rope.
- u) Vide Judgment on Conviction dated 28.08.2002, and Order on Sentence dated 31.08.2002, respectively the Trial Court convicted the Appellant herein for commission of offence punishable under Section 302 of IPC and the Appellant herein was sentenced to undergo imprisonment for life and to pay a fine of Rs.2000/- and in default to further undergo rigorous imprisonment for further six months for the commission of offence punishable under Section 302 of IPC.
- v) It is the above Order of Conviction and Sentence passed by the Trial Court which are under challenge in the present Appeal.



4. Learned Counsel for the Appellant submits that the Trial Court has failed to appreciate that: (i) the Prosecution's case is purely based upon circumstantial evidence which remains unproved; (ii) there is no continuity in the chain of circumstances sought to be established; (iii) there is no evidence of last seen witness and no evidence that the Appellant opened the shutter in the morning of 29.10.1998; (iv) there is a difference in the timings of closing of clinic by PW-7 and handing over of keys to the deceased Alok by PW-21; (v) arrest of Appellant was not on the date and manner as claimed by the prosecution; (vi) recovery of rope allegedly from the Appellant was false and planted; and (vii) there are lapses in investigation.

5. Learned Counsel for the Appellant argues that PW-7 stated in his deposition that he did know who killed the deceased Alok and it was the police who informed him that the Appellant had committed the murder. He further pointed out that PW-6 did not see the Appellant coming out of the clinic after the shutter of the clinic was opened. Additionally, he submits that PW-21, in his cross-examination, stated that he had not informed the police that the shutter could not be opened because it was locked from inside or that the Appellant had emerged from the clinic. The learned counsel further contended that the clinic is not visible from the Dhaba, and therefore, it cannot be conclusively established that the Appellant entered the clinic with the deceased Alok on the alleged date. Hence, according to the learned Counsel for the Appellant, the "last seen" theory has not been proved beyond reasonable doubt.

6. Learned Counsel for the Appellant also contends that PW-7 stated in his examination-in-chief that he reached the Chandsi Clinic on 28.10.1998 at about 10:45 PM, closed it, locked it and handed the key to one Raju at



Vishnu Dhaba. In contrast, PW-21 deposed in his examination-in-chief that one Dr. Bengali had given him the clinic keys at around 9:30 PM and that the deceased Alok collected the keys from him at about 9:45 PM. Learned Counsel for the Appellant further argues that these discrepancies in the timings provided by the two witnesses regarding the closure of the clinic and handing over of the keys create significant doubt about the prosecution's versions of events.

7. It was also argued by the learned Counsel for the Appellant that the Appellant was never absconding and had, in fact, remained in the illegal custody of the police throughout, only to be subsequently shown as formally arrested on 07.11.1998.

8. Learned Counsel for the Appellant also sheds light on the fact that PW-12 in his examination-in-chief stated that the SHO received secret information and a raid was conducted by a team comprising himself, the SHO, other staff members and PW-9. According to PW-12, the Appellant was apprehended at Nangloi Railway Station on being pointed out by PW-9. Yet, during cross-examination, PW-12 gave a completely different version. In addition to this, he also argues that PW-20, offered another contradictory account, stating that PW-9 had telephoned him on the morning of 07.11.1998 with information about the Appellant, following which PW-12 rushed with his staff to Nangloi Police Station. Learned Counsel further adds that these inconsistent versions render the prosecution's story unreliable and strongly support the defence's contention that the Appellant was never on the run. Rather, he had been in illegal police custody much prior to the arrest, during he was subjected to severe beating, as reflected in the Appellant's MLC for which the prosecution had offered no explanation.



9. Learned Counsel for the Appellant concluded his arguments by contending that the blue nylon rope which was alleged to have been used for strangulation is wholly unreliable. The rope was shown to have been recovered in two segments: one piece allegedly found tied to a nail on the left-side wall of the rear portion of Chandsi Clinic, and the other, measuring about 10 meters, purportedly recovered from a garbage dump on the basis of the Appellant's disclosure. However, the recovery suffers from serious infirmities as there was no independent witness associated with the recovery proceedings and the rope was never sent for forensic examination.

10. *Per contra*, the learned APP for the State claims that the arrest was effected on the basis of a secret tip-off, and the testimonies of the police witnesses reveal no material inconsistencies.

11. In addition, learned APP for the State has reiterated the arguments raised before the Trial Court and contends that the Appellant has been convicted after a thorough appreciation of evidence. He has taken this Court through the evidence recorded before the Trial Court and has vehemently opposed the arguments advanced by the learned Counsel for the Appellant. He further states that the case of the prosecution has been proved beyond all reasonable doubt and conviction should stand.

12. Heard learned counsels for the parties and perused the material on record.

13. Before delving into the merits of the case and appreciating the rival contentions of the parties, it is pertinent to note that the Appellant herein had filed an Application being CRL.M.B.802/2003 for suspension of sentence before this Court, which was allowed *vide* Order dated 02.12.2003.

14. It is trite law that the case of prosecution must stand or fall on its own



legs and it cannot derive any strength from the weakness of the defence. Indisputably, in the present case the conviction of the Appellant has been based on circumstantial evidence and in cases like these an onerous duty is cast upon the Courts to be cautious and to ensure that they do not rely on surmises or conjectures. Furthermore, the Courts must be extremely cautious to ensure that surmises or conjectures are not allowed to take place of legal truth. Resultantly, the Courts are required to examine whether the circumstantial evidence creates such an interlocking web that excludes every other reasonable hypothesis consistent with the innocence of the Appellant and the guilt of the Appellant is the only possible inference. The Apex Court in the case of Dharm Das Wadhvani v. State of U.P., (1974) 4 SCC 267, while fleshing out the above position, has held as under:

*“12. Shri Nuruddin Ahmed, Counsel for the appellant, rightly stressed that the prosecution edifice was built on circumstantial evidence only since no one had seen the accused mix strychnine with aspirin before serving the doctor. The critical rule of proof by circumstantial evidence, Counsel reminded us, is that such testimony can be the probative basis for conviction only if one rigorous test is satisfied. **The circumstances must make so strong a mesh that the innocence of the accused is wholly excluded and on every reasonable hypothesis the guilt of the accused must be the only inference.** Shri Nuruddin Ahmed suggested some maybes in the case excluding his client's culpability, and contended that the test of incompatibility with the innocence of the accused had not been fulfilled at all here. **As a proposition of law and commonsense, we agree that unlike direct evidence the indirect light circumstances may throw may vary from suspicion to certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a***



conviction.”

(emphasis supplied)

15. The law regarding cases resting on circumstantial evidence has been further crystallised in the case of Sharad Birdhichand Sarda v. State of Maharashtra, **(1984) 4 SCC 116**, wherein the Apex Court has held as under:

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“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.”

153. *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 v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“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.

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

16. An examination of the law as laid down by the Apex Court shows that the five *panchsheel* principles, first articulated in Sharad Birdhichand Sarda (supra), have withstood the test of time and continue to govern the field. These *panchsheel* principles have been re-affirmed by the Apex Court in subsequent decisions [See Nagendra Sah v. State of Bihar, (2021) 10 SCC 725, Guna Mahto v. State of Jharkhand, (2023) 6 SCC 817, Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, (2025) 2 SCC 399, Ravi v. State of Punjab, (2025) 3 SCC 584].

17. It is in light of the settled principles and in context of the law as laid down by the Apex Court, that this Court must assess whether the conviction of the Appellant based on circumstantial evidence can withstand judicial scrutiny.

18. At this juncture, it is apposite for this Court to examine and evaluate the testimonies of the witness statements given before the Trial Court.

19. Pratap Singh, PW-5, deposed that on the morning of 29.10.1998, while he was bathing in his jhuggi opposite Chandsi Clinic, he heard



knocking on the clinic shutter by the doctor's nephew, PW-19. When he later stepped out, he saw a crowd gathered and noticed the Appellant, a local rickshaw puller, opening the shutter, inside which the compounder "mama" lay unresponsive on a bench. Raju, a hotel worker familiar with the doctor's residence, was sent to call him. About a week later, police brought the Appellant to his jhuggi, and PW-5 confirmed that he was the same person seen at the clinic. PW-5 also admitted to being taken to the police station at night and kept there until morning when his first statement was recorded.

20. A plain reading of the deposition of PW-5 casts doubt on the voluntariness and reliability of his version. Significantly, PW-5 could not identify crucial details regarding the deceased Alok, Appellant, or the sequence of events and was confronted with several contradictions vis-à-vis his earlier statements. In fact, PW-5 also did not concede to the fact that he saw the Appellant opening the shutter from the inside.

21. Mehant Bhagat, PW-6, who ran a paan shop adjacent to Chandsi Clinic, deposed that on 29.10.1998 around 7:30-8:00 PM, a relative of the doctor knocked on the clinic shutter, and the Appellant, a local rickshaw puller emerged. The compounder "mama" was lying inside, unresponsive, with some blood visible on his fingernails. Raju was sent to call the doctor, who returned around 9:00 AM. PW-6 further stated that police later brought the Appellant to his shop, and he identified him as the same person who opened the shutter from the inside.

22. However, in his cross-examination, PW-6 made a material departure from his examination-in-chief. He stated that (i) he had not seen the Appellant opening the shutter from inside; and (ii) he only saw the Appellant standing among the crowd outside the clinic. Significantly, PW-6



also admitted that he did not know the Appellant earlier and recognised him only when police brought him a week later for identification at the shop. PW-6, who was projected as a crucial eye-witness, completely contradicted his own statement made on oath. In the opinion of this Court, this contradiction is not a minor inconsistency but goes to the very heart of the prosecution's theory. The alleged act of the Appellant opening the shutter and coming out of the clinic is the sole circumstance relied upon to place the Appellant inside the clinic at the relevant time. Once PW-6 retracts this crucial fact, the entire last-seen circumstance collapses.

23. Furthermore, the Report of the ACP, Sultan Puri dated 30.10.1998 clearly establishes that the Appellant had never absconded. On the contrary, he was in the custody of the police and was later falsely shown to have been arrested on 07.11.1998. The on-site observations recorded by the ACP further highlight lapse in essential investigative steps that were ignored by the Trial Court. The Report of the ACP Sultan Puri dated 30.10.1998 is being extracted herein below for ease of reference:



2026:0



DHC:251-DB

ON the spot observation.

refer case FIR No. $\frac{803}{90}$ 3207 S. Sultanpuri dtd. 29-X-98

I visited the spot at Shani Bazar Road and there after the visited the place of Pawan Vihar, where deceased was found laying. following points are to be seen.

1. mark of strangulation is there on the throat of deceased. the rope or other material which has been used for the purpose be recovered.
2. Vinod Kumar's movements be verified.
3. movements of deceased Alok Kumar be verified on the preceding day of murder.
4. Neighbours especially Kauriwal, Hotel owner and his servant Raju and Ragnwal be examined in detail.
5. Vinod Kumar be interrogated and motive of murder be ascertained.

SHO/S. Puri

3207/SHO/S. Puri

noted
com. fr. complain

SHO/S. Puri
4/11/98

SHO/S. Puri

30.10.98
SHO/S. Puri



24. The said Report demonstrates that certain critical directions were not effectively acted upon. Instead, the Appellant was kept in unlawful custody and later projected as having been apprehended on the basis of secret information. Such fabrication undermines the credibility of the prosecution's case.

25. In addition, the blue nylon rope used for the alleged strangulation was recovered in two separate pieces: (i) one tied to a nail inside the rear portion of Chandsi Clinic (Ex.PW-7/B); and (ii) approximately 10 metres long, allegedly recovered from a garbage dump (Ex.PW-9/C) on the basis of the Appellant's disclosure statement (Ex.PW-9/B). However, the recovery itself suffers from serious defects. No independent witness was associated with the recovery proceedings. Further, the rope was never sent for forensic analysis, rather only an application for opinion about the rope was sent by the prosecution (Ex.PW-20/G). These lapses strike at the very root of the prosecution's case regarding the weapon of offence and creates a significant evidentiary gap.

26. In the opinion of this Court, the prosecution utterly fails to establish with certainty that the Appellant was present inside the clinic or that he had any role in the incident. On the contrary, the evidence indicates that the Appellant was roped into the case through tutoring and police pressure, with no credible, independent, or consistent eyewitness account connecting him to the crime.

27. After having gone through the material on record, the testimonies of the witnesses, and the arguments advanced by the parties, this Court is of the view that the conviction of the Appellant cannot be sustained. As mentioned earlier when it comes to conviction in cases of circumstantial evidence.



From the discussion, it is evident that the prosecution's case is riddled with multiple inconsistencies and material lacunae which have rendered the chain of evidence incomplete and incapable of establishing the guilt of the Appellant beyond reasonable doubt. To sum up, some of the glaring inconsistencies which render the case of the prosecution improbable are noted hereinunder:

- a) Given the material contradictions in the evidence of PW-5, PW-6, PW-7 and PW-21, especially the retraction by PW-6, the prosecution has failed to prove the Appellant's presence at the clinic or any involvement in the death of the deceased Alok. Resultantly, the last seen theory stands completely demolished.
- b) There is an infirmity with respect to timing of events surrounding the closing of the clinic and handing over of its keys. PW-7 stated he reached the clinic at 10:45 PM on 28.10.1998 and closed, locked it, and handed the keys to PW-21. In contrast, PW-21 asserts that he received the clinic keys much earlier at about 9:30 PM from Dr. Bengali and that he thereafter handed the same keys to the deceased Alok. These inconsistent timelines contradict each other.

28. Unlike direct evidence, the indirect light circumstantial evidence may throw, varies from suspicion to certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction. This Court is of the view that in the facts and circumstances of this case, the prosecution has been unable to prove the guilt of the Appellant beyond reasonable doubt. Seen from the prism of the *panchsheel* test as enunciated in Sharad Birdhichand Sarda (supra) and refined further by the pronouncements of the Apex Court, it cannot be said that the circumstances from which the guilt of



30. In light of the above, the appeal is allowed and the conviction of the Appellant is set aside. Pending applications, if any, are disposed of.

VIMAL KUMAR YADAV, J

Prateek/JR