A STATE THROUGH C.B.I.

v.

MAHENDER SINGH DAHIYA

(Criminal Appeal No. 1360 of 2003)

JANUARY 28, 2011

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[B. SUDERSHAN REDDY AND SURINDER SINGH NIJJAR, JJ.]

Penal Code, 1860: s.302 and s.201 – Diabolic murder – C *Strangulation to death and dismemberment and mutilation of body parts – Respondent an Indian orthopedic doctor got engaged with deceased and shifted to London to stay with in-laws – Marriage took place subsequently – Honeymoon trip was arranged for 5 days – Respondent returned from trip after* D *2 days without deceased and stated that the deceased abandoned him – Thereafter he absconded and remained underground until arrest – Body parts found in the rubbish bin and lake near the hotel where the couple stayed and identified to be that of deceased – Allegation against respondent that* E *he strangulated his wife to death on the first night of honeymoon and thereafter dismembered and mutilated parts of her body and disposed them of – Trial court held that circumstances pointed out towards the guilt of the respondent and convicted him u/s.302 and s.201 – Acquittal by High* F *Court on the ground that the prosecution failed to connect the respondent with the alleged murder – On appeal, held: Prosecution had miserably failed to connect the respondent with the alleged murder of his wife – Resentment of the respondent to the friendly behaviour of the deceased towards the other men would not be sufficient to hold that he had the* G *necessary motive to kill the deceased – There was nothing to suggest that the deceased or her family members had apprehended any harm or threat to life of deceased at any stage till the couple left for the honeymoon – Given the*

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previous attitude of the deceased, it was possible that she had walked out on her husband – Explanation given by respondent consistently from beginning was that the deceased had left him voluntarily – As regards the circumstances relating to the state of affairs that existed in the hotel room, the evidence of the hotel staff was inconsistent – Finger print expert was not able to connect the palm prints of body parts recovered with the palm prints of the deceased – The reports submitted by the doctors contained numerous discrepancies – That apart the identification marks given by the witnesses did not coincide with the reports and therefore, no reliance could be placed upon them for establishing the identity of these body parts as that of the deceased – Articles and clothes taken on trip by deceased not produced for identification by witnesses at the time of trial – There was no reliable evidence to indicate that the blood that was recovered from the bathroom of hotel room definitely belonged to the deceased – An adverse inference against the respondent cannot be drawn merely because he remained in hiding till he was arrested – Prosecution also did not produce any evidence with regard to the recovery of any weapon of offence – Order of acquittal was justified.

Criminal law: Motive – Held: In cases based on circumstantial evidence, motive for committing the crime assumes great importance – Absence of motive would put the court on its guard to scrutinize the evidence very closely to ensure that suspicion, emotion or conjecture do not take the place of proof – In a case where there is motive, it affords added support to the finding of the court that the accused was guilty for the offence charged with.

Evidence: Suspicion no matter how strong cannot, and should not be permitted to take the place of proof – Therefore, courts are to ensure a cautious and balanced appraisal of the intrinsic value of the evidence produced in Court.

A The prosecution case was that the respondent was guilty of murdering his wife. The respondent was an Orthopedic surgeon. He belonged to a village called Turkpur, District Sonepat. PW-48, a native of Punjab had migrated to England in 1962. He was settled there with B his wife (PWUK-1) and children. The victim-deceased was his daughter. In 1978, PW-48 visited India to find suitable Indian boy for marriage with the deceased. They found the respondent to be a suitable match for her. The engagement ceremony was held between the respondent C and the deceased on 31st August 1978 at village Turkpur followed by a marriage ceremony. However, as per the understanding of the parents of the deceased, the said marriage was to be treated as engagement. A registered marriage was to take place in London subsequently. D Therefore, the marriage was not consummated and the deceased along with her parents returned to London on the same night. As arranged, the respondent reached London on 27th February, 1979 and started living with his in-laws. At the same time, he pursued his medical studies and got himself registered as a post graduate student. E PW-48 purchased a house in the joint name of the deceased and the respondent for 20,000 UK Pounds. A joint bank account was also opened in the name of the deceased and the respondent.

F On 5th April, 1979, on the occasion of the birthday party of younger daughter of PW-48, all friends (boys and girls) of the three daughters of PW-48 were invited in the party. After the party, the respondent started abusing the whole family. He was aggressive and alleged the G deceased to be characterless as she had been dancing and mixing up with boys. The deceased was upset with the behaviour of the respondent. She told her mother that it did not seem possible for her to spend the rest of her life with the respondent. The next morning the family H discussed about the previous day incident. When the

respondent was told that the deceased wanted to cancel the engagement, he apologized for his conduct. During the night of 10th April, 1979, the deceased wrote a letter to the respondent suggesting that wedding should be cancelled in the month of May, until both of them were ready for the same. In reply, the respondent also wrote a letter to the deceased.

On 26th May, 1979, the marriage between the respondent and the deceased was registered in London. A honeymoon trip was arranged for five days. On 27th May, 1979, they left for the honeymoon trip. They carried two suit cases, one of red colour belonging to the deceased and the other of brown colour belonging to the respondent containing their cloths and other articles. All the tourists in the group stayed in a Hotel. The deceased and the respondent checked into room no.415. After sometime they went for a short sight seeing tour "Brussels by Night". They returned to the hotel at about 11 A.M. and retired to their room. Thereafter, the prosecution version was that the respondent strangulated the deceased to death in the hotel room and then dismembered and mutilated parts of her body and disposed them of in the different part of city of Brussels. Thereafter, the respondent entered UK on the same day and withdrew 200 UK Pounds from the joint account he had with the deceased and then went to the house of his in-laws. He was carrying two suitcases. He did not give satisfactory explanation to his in-laws about the whereabouts of the deceased. He stated that she had abandoned him at Brussels on the morning of 28th May, carrying away her clothes and money. The respondent wanted to get away from the house, but he was restrained by the family members with the assistance of neighbour. Thereafter, PW-48 took the respondent to lodge a missing person's report about the disappearance of the deceased. On the way back from the police station

A alongwith his father-in-law, the respondent escaped by jumping onto a running bus. Thereafter, he stayed in YMCA, London without disclosing his identity. He left for India via Germany and reached Delhi on 6th June, 1979. He afterwards remained underground and absconding
B and could not be traced until 9th May, 1983. He was hiding in a village in District Lalitpur, UP where he had taken up the practice of general medicine.

The trial court held that all the circumstances were
C proved in favour of the prosecution and convicted the respondent under Section 302 IPC and 201 IPC and sentenced him to imprisonment for life.

The High Court acquitted the respondent of both the charges. The High Court held that the finding of trial court
D that the resentment of the respondent to the friendly behaviour of the deceased towards the other men provided strong motive to the respondent for committing murder of his wife was not plausible; that the respondent had not disputed that the deceased was with him in the
E room throughout the night, however, she left him in the morning of 28th May, 1979; that the evidence of witnesses to project a certain state of affairs in the hotel room to prove that the respondent had a guilty mind was inconsistent; that although the custody of all the clothes
F which the deceased had taken on the honeymoon trip was taken, but they were not produced for identification by the witnesses; that no reliance could be placed on the reports presented by the prosecution for the purpose of establishing the identity of the body parts as that of the
G deceased; that the reports of Stomatologist (PWBG-20) were inconsistent and, therefore, not reliable; that the prosecution failed to place on record any cogent evidence with regard to the blood group of the deceased; that there was no reliable evidence to indicate that blood that was recovered from the bathroom of room no.415
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belonged to the deceased; that there was no recovery of weapon and, therefore, the prosecution failed to connect the respondent with the alleged murder. The instant appeal was filed challenging the order of the High Court.

Dismissing the appeal, the court

Held: 1.1. Undoubtedly, the instant case demonstrated the actions of a depraved soul. The manner in which the crime was committed in the instant case, demonstrated the depths to which the human spirit/ soul can sink. But no matter how diabolical the crime, the burden remains on the prosecution to prove the guilt of the accused. Given the tendency of human beings to become emotional and subjective when faced with crimes of depravity, the courts have to be extra cautious not to be swayed by strong sentiments of repulsion and disgust. It is in such cases that the court has to be on its guard and to ensure that the conclusion reached by it are not influenced by emotion, but are based on the evidence produced in the court. Suspicion no matter how strong cannot, and should not be permitted to take the place of proof. Therefore, in such cases, the courts are to ensure a cautious and balanced appraisal of the intrinsic value of the evidence produced in Court. [Para 19] [1135-A-D]

1.2. The High Court has examined the entire evidence dispassionately and with circumspection. The High Court systematically and chronologically examined the series of incidents/circumstances relied upon by the prosecution to establish the guilt of the respondent. In cases based on circumstantial evidence, motive for committing the crime assumes great importance. In such circumstances, absence of motive would put the court on its guard to scrutinize the evidence very closely to ensure that suspicion, emotion or conjecture do not take the place of proof. A motive is something which prompts a person to form an opinion or intention to do certain

A illegal act or even a legal act with illegal means with a view to achieve that intention. In a case where there is motive, it affords added support to the finding of the court that the accused was guilty for the offence charged with. But the evidence bearing on the guilt of the accused B nonetheless becomes untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime. In the instant case, the C conclusion recorded by the High Court was in accordance with the said principles. Merely because the respondent objected to the behaviour of the deceased towards her male friends at the birthday party of her sister would not be sufficient to hold that the appellant had the D necessary motive to kill her. It is inconceivable that the respondent would have married the deceased only for the purpose of committing her murder and that too on the very first night of their honeymoon. It was in fact in the interest of the respondent that the deceased had remained alive. The success of his very objective to E remain permanently in England was dependent on the continuance of his marriage for at least another year. [Paras 20, 21, 23] [1135-E-F; 1137-A-B; 1137-F; 1138-D-G; 1139-A-B]

F *Hanumant Govind Nargundkar v. State of M.P.* 1952 SCR 1091 ; *Naseem Ahmed v. Delhi Admn* (1974) 3 SCC 668; *Surinder Pal Jain v. Delhi Administration* 1993 Supp (3) SCC 681; *Tarseem Kumar v. Delhi Administration* 1994 Supp (3) SCC 367; *Subedar Tewari v. State of U.P.* 1989 Supp (1) G SCC 91; *Suresh Chandra Bahari v.. State of Bihar* 1995 Supp (1) SCC 80 – relied on.

1.3. The High Court correctly concluded that the two letters Ext.CW-13 and Ex.CW-14 exchanged between the deceased and the respondent on 10th April, 1979 would H tend to show that respondent was in fact trying to make

amends after the birthday party on 5th /6th April, 1979. There was no untoward incident thereafter. The marriage was duly registered on 26th May, 1979 and that the couple voluntarily left for the honeymoon. The High Court correctly concluded that it was highly improbable to comprehend that respondent had a pre-determined *mind* or motive to cause the death of the deceased on the honeymoon night itself at the first available opportunity of being in the company of the deceased in a closed room as suggested by the prosecution. Had the attitude of the parties been as suggested by the prosecution, they would not have agreed to a marriage followed by a honeymoon trip outside London. There was nothing to suggest that the deceased or her family members had apprehended any harm or threat to life of the deceased at any stage till the couple left for the honeymoon on morning of 27th May, 1979. [Paras 24, 25] [1139-C-D; 1140-F-H; 1140-A]

2. The explanation given by the respondent consistently from the beginning was that the deceased had left him voluntarily early in the morning of 28th May, 1979. It was also his case that she married him only under pressure from her parents. She had purchased a new suitcase in which she packed most of her clothes immediately upon returned from the "Brussels by Night" tour. The red suitcase with which she had traveled from London to Belgium was left with the respondent containing some of her clothes. This suitcase even though had a blood stain was carried back to the house of the deceased's parents by the respondent himself. It is inconceivable that a person who has committed the murder of his wife and has used the said suit case for storing and carrying the body parts would bring it back to England risking his own safety. The respondent also narrated before the police that his wife had left him voluntarily on the morning of 28th May, 1979. This fact

A was further reiterated by him in the letter to the Prime Minister of India. Given the previous attitude of the deceased, it was possible that she had walked out on her husband. The last seen evidence would not necessarily mean that the respondent had killed his wife. [Paras 27, B 28] [1140-E-H; 1141-A-E]

3.1. The most important circumstance relied upon by the prosecution related to the state of affairs which existed in Room No.415 of Hotel Arenberg and the behaviour pattern exhibited by the respondent on the C morning of 28th May, 1979. This was sought to be proved by the evidence given by three witnesses, namely, PWUK-12, PWBG-22 and PWBG-2. The High Court rejected the evidence of the tour guide (PWUK-12) as being inconsistent. The High Court noticed that this D witness had gone up to room no.415 to inform the couple that the tour party was ready to leave. He knocked on the door. It was half open. He found the respondent perspiring but at the same time assumed his behaviour to be quite normal or non-exceptional. The High Court E also noticed that this witness had prepared two reports after the termination of the tour. None of the two reports mentioned about the abnormal behaviour of the respondent. In fact, in one of the reports, this witness mentioned the fact that the father-in-law of the respondent F had told him that the deceased had abandoned the respondent on the morning of 28th May, 1979. The High Court was justified in concluding that this statement supported the defence plea. [Paras 29, 30] [1141-F-G; 1142-A-D]

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3.2. In rejecting the evidence of the chamber maid of the hotel, PWBG-22, the High Court noticed that this witness was examined by the police on a number of occasions, but she could not even give the correct room number. She actually stated that she visited room no.410.

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The High Court also concluded that from her evidence it became apparent that the respondent did not even put a latch on the door nor did he take any extra precaution to keep the room closed. This witness was able to enter the room without knocking. The High Court, however, noticed that this witness did not find any incriminating article like the body or body parts either in the room or in the bathroom, nor she found even a trace of blood on the carpet or on the wall. This witness had herself stated that the respondent had left the room unattended knowing perfectly well that this witness could enter the room in his absence. The High Court correctly assessed the evidentiary value of the statement of this witness. [Paras 32, 33] [1143-A-H; 1144-A]

3.3. It was only after very careful consideration of the evidence of all the witnesses that the High Court concluded that the behaviour of the respondent could not be said to be consistent with the guilt of the respondent. The High Court correctly noticed that no explanation was forth coming as to where the body or dismembered body parts could have been concealed by the respondent throughout the night of 27th/28th May, 1979 as well as the morning and the afternoon of 28th May, 1979. The suggestion of the prosecution that the body might have been kept either in the cupboard or under the bed was correctly held to be conjectural. [Para 34] [1144-B-D]

4.1. The High Court noticed that police had already collected and seized various articles and things from the house of PW-48. The High Court reached the appropriate conclusion that the possibility of the garments and articles having been planted by the police by obtaining the same from the house of the deceased with the object of fixing the identity of the body parts belonging to the deceased by means of the clothes cannot be ruled out. No contemporaneous recovery memo was prepared by

A the police on 29th May, 1979 itself. There was omission of the details of the allegedly recovered clothes in the statement of the witnesses. The prosecution had allegedly recovered the clothes the deceased had taken on the trip. The deceased's wedding dress was stated to B have been recovered as part of the clothings. The High Court correctly observed that ordinarily a woman would not carry her wedding dress on her honeymoon trip. The High Court also noticed that though the prosecution had taken custody of all the clothes which the deceased had C taken with her on the honeymoon trip, they were not produced at the trial for identification by the witnesses. Only photographs of the clothings, which had been allegedly taken on 12th June, 1979 i.e. after 16 days, were produced. [Paras 36, 37] [1146-B-F]

D 4.2. The High Court correctly took view that the prosecution was duty bound to produce the clothings at the trial. It was through these clothings and articles that the prosecution had sought to establish the identity of the deceased. The High Court correctly recorded the E conclusion that on consideration of the relevant evidence of the witnesses and various documents on record, the prosecution had miserably failed to establish the recovery of clothes or shoes by means of any cogent and reliable evidence. The identification of the clothings and F shoes as belonging to the deceased through the testimony of the parents of the deceased (PW-48 and PWUK-2) was also not sufficient to discharge the burden of proof which lay on the prosecution. The identification of the shoes by PW-48 was not made in the presence of G any police officer. He was unable to remember if any police officer was present or not at the time of the identification. The High Court drew the only logical conclusion from the said that this witness was not consistent so far as the identification of the clothes were H concerned. [Para 38] [1146-G-H; 1147-A-F]

5. A perusal of provisional and the final report of Stomatologist showed that initially the report stated that the individual was at-least 30 years old and of North-African type. At the end of the report, it was stated that the individual should be between 29-30 years only. This opinion underwent a change by the time the final report was prepared. It was then stated that the "Individual belonging to the female sex whose age is presumed between 20 and 30 years, and belonging to North-African Indian type." The difference between the two reports was so glaring, understandably, the High Court was compelled to hold that the second report was clearly an afterthought and deliberate improvement over the earlier report. The High Court appropriately concluded that this must have been made to cover up the first report which did not connect the body parts with that of the deceased in as much as age of the deceased was stated to be around 25 years. In fact, it is a matter of record that the deceased was born in 1956, that would make her only 24 years at the relevant time. [Para 45] [1152-A-E]

6.1. The mother of the deceased, PWUK-1, had stated that the deceased had a scar mark on her left knee. She also stated that the deceased had three inoculation marks on her shoulder. The High Court noticed that this witness was, however, not able to give details of any identification marks on her other children. This would be sufficient to justify the conclusion reached by the High Court that PWUK-1 and PW-48 were not aware/sure of any identification marks of the deceased. The High Court, therefore, observed that a possibility cannot be ruled out that these witnesses may have given these marks after the disclosure of such marks in the postmortem examination's report. [Para 46] [1153-A-E]

6.2. The finger print expert was not able to conclude that the evidence produced connected the palm prints

A with the palm prints of the deceased. The reports submitted by the doctors contained numerous discrepancies. That apart the identification marks given by the witnesses did not coincide with the reports. Therefore, the High Court rightly concluded that no B implicit reliance could be placed upon them for the purpose of establishing the identity of these body parts as that of the deceased. [Para 47] [1153-F-H]

7.1. PW-48 only stated that the blood group of the C deceased was 'O', but even he was not able to say whether it was 'O+' or 'O-'. The High Court quite appropriately observed, on the basis of the opinion of the examining experts, that more than fifty per cent population of Belgium has 'O' blood group. In such state of affairs, the High Court was constrained to conclude that the D prosecution was not able to establish even this limb by means of cogent and reliable evidence. [Para 48] [1154-D-F]

7.2. There was no reliable evidence to indicate that E the blood that was recovered from the bathroom of room no. 415 definitely belonged to the deceased. The only drop of blood that was found was at the base of the bidet, in the bathroom. The bathroom was used successively by different tourists occupying the room. This apart, the F very recovery of the blood stains from the bidet seemed highly doubtful. The evidence of the Manager of the hotel in whose presence the blood stains were allegedly lifted was that many tourists had occupied room no. 415 between 29th May, 1979 and 12th June, 1979. According to him, no tourists/guests ever complained of any blood G spot on the bidet. The first ever discovery of blood was stated to be on 12th/13th June, 1979, i.e., about 14 days of the alleged incident. If the blood stains lifted from the bidet were of a person who was killed on 28th May, 1979, the same could not be of red or red brown colour. The H

colour of the stain would have been blackish brown. The High Court was wholly justified in rejecting the evidence with regard to the recovery of blood from the bidet. [Para 50] [1155-F-H; 1156-A-B]

8. An adverse inference against the respondent cannot be drawn merely because he remained in hiding till he was arrested by the CBI. The subsequent conduct of the respondent was not consistent with the expected conduct of a guilty person. If the respondent had any intention of absconding, he could have done so initially after the alleged murder of his wife. There was no need for him to come back to England. Having come back, he need not have gone directly to the house of his in-laws. Not only did he come back to England, he carried with him the red suitcase containing some of the deceased's clothes. According to the prosecution, this suitcase had contained blood stains which had belonged to the deceased. It is inconceivable that a person having a guilty mind would have been carrying such an incriminating article back to the house of his in-laws. He went back to India apprehending danger from his father-in-law and family. This apprehension of danger to his life at the instance of his father-in-law continued even in India. The fact that an attempt was made on his life had been duly recorded by the trial court. The respondent had been petitioning the police authorities as well as the Home Minister and the Prime Minister of India seeking protection. Evading arrest would certainly be an illegal act but it does not lead to the only conclusion that the respondent was hiding due to a guilty conscience. The respondent did not come out of hiding due to fear as also to avoid arrest by the police but it certainly cannot be concluded that he was hiding because of a guilty conscience. [Paras 51, 52] [1156-C-H; 1157-E]

Matru Alias Girish Chandra v. The State of Uttar Pradesh (1971) 2 SCC 75 – relied on.

A 9. At the trial, the prosecution did not produce any evidence with regard to the recovery of any weapon of offence. Nor any weapon was produced in court, at the trial. Even according to the sequence given by the prosecution, it would have been impossible for the B respondent to procure the surgical instruments in the city of Brussels during the night intervening 27th/28th May, 1979. It is a matter of record that the entire group of tourists did not return back to the hotel till after 11 O' clock during the tour "Brussels by Night". The deceased was C with him throughout the tour. The respondent could not have carried the surgical instruments with him without the same being noticed at the customs barriers. This apart, prosecution miserably failed to establish that the respondent had any intention of committing the murder D of his wife at the commencement of the honeymoon trip. Even the deceased's parents did not entertain any such apprehensions. It was also the prosecution case that something went amiss in room no. 415 during the night of 27th/28th May, 1979. Therefore, it made the possession of surgical instruments by the respondent on E the fateful night in Brussels virtually impossible. Such severance of the body parts could also not possibly be achieved by use of a simple butter knife. It is simply too farfetched a notion to be taken seriously. The conclusions reached by the High Court would clearly F show that the prosecution had miserably failed to connect the respondent with the alleged murder of his wife. The conclusions recorded by the High Court were fully justified by the evidence on record. [Paras 53, 54] [1157-F-H; 1158-A-H]

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Case Law Reference:

1952 SCR 1091	relied on	Para 20
(1974) 3 SCC 668	relied on	Para 20

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1993 Supp (3) SCC 681	**relied on**	**Para 23**	A
1994 Supp (3) SCC 367	**relied on**	**Para 23**	
1989 Supp (1) SCC 91	**relied on**	**Para 23**	
1995 Supp (1) SCC 80	**relied on**	**Para 23**	B
(1971) 2 SCC 75	**relied on**	**Para 51**	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1360 of 2003.

From the Judgment & Order dated 19.12.2002 of the High Court of Delhi at New Delhi in Criminal Appeal No. 169 of 1999. C

P.P. Malhotra, ASG, P.K. Dey, Chetan Chawla, Madhurima Mridul, Shweta Verma, Arvind Kumar Sharma for the Appellant. D

Siddharth Aggarwal (for Nikhil Nayyar) for the Respondent.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. This appeal is directed against the final order of the High Court of Delhi dated 19th December, 2002 passed in Criminal Appeal No. 169 of 1999, whereby the accused Dr. Mahender Singh Dahiya has been acquitted of the charges under Sections 302 and 201, Indian Penal Code (for short 'IPC') by setting aside the judgment of the trial court whereby he had been convicted under Sections 302 and 201 IPC and sentenced to imprisonment for life and fine of Rs.5,000/- for the offence under Section 302 IPC and also imprisonment for seven years and fine of Rs.5,000/- for offence under Section 201 IPC. E F G

2. Before the trial court, the prosecution had succeeded in proving that Dr. Mahender Singh Dahiya (hereinafter referred to as 'the respondent') had committed the murder of his wife Namita, a British national of Indian origin, on the intervening H

night of 27th/28th May, 1979. The murder was allegedly committed on the very first night of the honeymoon in room No. 415, Hotel Arenberg, Brussels, Belgium. It is further the case of the prosecution that after committing the murder, the respondent had dismembered and extensively mutilated the body of the victim. He subsequently disposed of the body parts at different places in the city of Brussels. This was done with the intention of destroying the evidence of the murder.

3. The aforesaid conviction and sentence were challenged before the Delhi High Court by way of an appeal. The High Court upon re-appraisal of the entire evidence accepted the appeal and acquitted the respondent of both the charges. Aggrieved by the aforesaid judgment of the High Court, the State through CBI, New Delhi is in appeal before this Court.

4. The High Court notices at the very outset of the impugned judgment that this is an unusual case and perhaps the first of its kind. We are of the opinion that the High Court had good reasons for making such a statement. The peculiarity which makes this murder case rather rare is not only the ghastly and the brutal manner in which the offence is alleged to have been committed but also the complexities created by a number of unique factors. The accused respondent herein is an Indian. He is an Orthopedic Surgeon. The alleged victim of the crime Namita, though of Indian origin was a British citizen. She had grown up in England since she was 5 or 6 years old. The offence was allegedly committed in a third country, i.e., Belgium. Consequently, the investigation of the case was conducted in three different countries. Initially, the Belgium authorities investigated the crime. Thereafter, the Scotland Yard in London also participated in the investigation. It was concluded in India. The investigation in Belgium and U.K. had been conducted according to the law and procedure of those countries. This led to its own difficulties. Initially, the Belgium authorities had requested for extradition of the respondent for his trial in Belgium. Later, the request was abandoned by the Belgium

authorities. The case was ultimately investigated by the CBI and the charge sheet was presented on 30th July, 1985. At the trial, a large number of witnesses being foreign nationals were examined on commission either in Belgium or in England. This further complicated the issues. Ultimately, the trial court convicted the respondent on 1st March, 1999, i.e., twenty years after the alleged commission of the crime.

5. We may now notice some of the undisputed facts, which are necessary for appreciation of a peculiar situation in which the alleged offence is said to have been committed. The respondent belongs to a village called Turkpur, District Sonepat, Haryana. He obtained his MBBS degree from Punjab University, Rohtak in 1973 and M.S. Degree in (Orthopedic) from A.I.I.M.S., New Delhi in December, 1978. He got himself registered with the Punjab Medical Council.

6. Jagdish Singh Lochab (PW-48) a native of Punjab had migrated to England in 1962. He was settled there with his family viz. wife Smt. Chandermukhi (PWUK-1), three daughters namely Namita, Amita Lochab (PWUK-2) and Shiela (PWUK-3) and two sons. Namita born in India in May, 1956 had acquired British citizenship. During 1978, Namita was working as accounts trainee with the British Broadcasting Corporation (BBC), London. In July-August, 1978, Jagdish Singh Lochab (PW-48) visited India to find suitable boy for marriage with his daughter Namita. They found the respondent to be a suitable match for their daughter. After making the selection of the proposed groom, Namita was called from London. The engagement ceremony was held between the respondent and Namita on 31st August, 1978 at village Turkpur followed by a marriage ceremony according to Hindu rites and customs at Delhi on 5th September, 1978. However, as per the understanding of the parents of Namita, the said marriage was to be treated as engagement only as there would have to be a registered marriage in London subsequently. Therefore, the marriage was not consummated and Namita along with her

A parents returned to London on the night of 5th September, 1978.

7. As arranged, the respondent reached London on 27th February, 1979. He started living with his in-laws at 22, Friars B Way, Action, W3, London. At the same time, he pursued his medical studies. He got himself registered as a post graduate student at Royal National Institute of Orthopedics, London on 12th March, 1979. Jagdish Singh Lochab (PW-48) purchased a house (No. 312, Horn Lane Act, London) in the joint name of C Namita and respondent valued 20,000 UK Pounds. He paid 10,000 UK Pounds, the remaining price was to be paid in installments. A joint bank account No.91053728 was also opened in the name of Namita and the respondent at Midland Bank, Acton High Street, London and two cheque books, one each in the name of Namita and the respondent were issued D by the bank.

8. On 5th or 6th April, 1979, 18th birthday party of Sheila, younger sister of Namita was celebrated where all the friends (boys & girls) of the three daughters of PW-48 including UK- E 23 Philips David Abbey, a colleague of Namita were invited in the party. Mr. and Mrs. Lochab left the house at about 7.30 pm and returned at about 1.30 a.m. in the morning. On their return the accused started abusing the whole family, he was aggressive and alleged Namita to be characterless, as she had F been dancing and mixing with boys. Namita was upset with the behaviour of the accused and was crying. She told her mother that it did not seem possible for her to spend the rest of her life with the accused. The next morning the whole family sat together along with the accused and discussed about the G incident of the previous night. When the accused was told that Namita wants to cancel the engagement, he apologized for his conduct in the previous night. During the night of 10th April,1979 at 1.30 a.m. Namita wrote a letter (exhibit CW-13, Volume-9, page 286) to the accused addressing him as Mahendra, suggesting that wedding should be cancelled in the H

month of May, until both of them were ready for the same. She advised him to get some self confidence to prove himself responsible enough to look after a wife and a home. In reply, the accused wrote a letter, to Namita addressing her as Nita, which is exhibit CW-14 (Vol.9, page 290).

9. On 26th May. 1979, the marriage between Mahender and Namita was registered at the Office of the Registrar of Marriages, London. It was followed by a reception the same evening at the Phoenix Restaurant, London. A honeymoon trip for the newly wedded couple was arranged for five days commencing from 27th May, 1979 to certain European countries through Cosmos Tours, London. In the morning of 27th May, 1979, Mahender and Namita left for the honeymoon trip. They were seen off by her family at Victoria Railway Station, London. They carried two suit cases, one of red colour belonging to Namita and the other of brown colour belonging to Mahender containing their clothes and other articles. The group of tourists including Namita and the respondent reached Brussels at about 6.30 p.m. the same evening. All the tourists in the group stayed at the fourth floor of Hotel Arenberg, Brussels. Mahender and Namita checked into room no. 415. After some time they went for a short sight seeing tour 'Brussels by Night'. They returned to the hotel at about 11.00 p.m. and retired to their room.

10. Hereafter, there are two versions, one according to the appellant and another according to the respondent. The prosecution version is that the respondent had strangled his wife Namita to death in their hotel room. He had then proceeded to dismember and mutilate parts of her body which were subsequently disposed of in the rubbish container and the lake. The respondent entered UK on the same day, i.e., 29th May, 1979 and withdrew an amount of 200 UK Pounds from the joint account he had with his wife bearing Account No. 91053728 from the Midland Bank, London. In the afternoon of 30th May, 1979, after withdrawing the money from the bank, he went to

A the house of his in-laws. He was carrying two suitcases. He, however, could not give any satisfactory explanation to his in-laws about the whereabouts of his wife Namita. He rather falsely stated to them that she had abandoned him at Brussels on the morning of 28th May, 1979, carrying away her clothes and B money. The respondent wanted to get away from the house as soon as possible without giving any explanation as to what happened in Brussels. He was, however, restrained by the family members with the assistance of a neighbour. Thereafter, Namita's father Jagdish Singh Lochab (PW-48) took the C respondent to Acton police station to lodge a missing person's report about the disappearance of Namita. On the way back from the police station along with his father-in-law, the respondent escaped by jumping onto a running bus. Thereafter, he stayed in the YMCA, London without disclosing his identity/ D particulars. He left for India via Frankfurt, West Germany and reached Delhi on 6th June, 1979. He afterwards, remained underground and absconding and could not be traced in spite of various efforts until 9th May, 1983. He was hiding in a village in District Lalitpur, U.P., where he had taken up the practice of general medicine under the fake name of Dr. M. Singh.

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11. We have heard the learned counsel for the parties. Very elaborate submissions have been made by Mr. P.P. Malhotra, learned Additional Solicitor General for the appellants and Mr. Siddharth Aggarwal for the respondent.

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12. Mr. Malhotra has submitted on behalf of the appellant that the High Court has committed a grave error in reversing the well reasoned judgment recorded by the trial court. He further submits that the trial court had meticulously examined the entire sequence of events. The evidence of the witnesses relating to G various facts and circumstances was discussed under various heads in order to see if the chain of circumstances for bringing home guilt for offences with which the accused had been charged was complete or not. The trial court discussed the facts

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which were sought to be proved by the prosecution under the following heads :-

"A. Native place of the accused and his educational qualifications.

B. Marriage of the accused, his departure for U.K. his stay at the house of his in-laws and registration of the marriage there;

C. Birthday party at the house of his in-laws; his conduct at and after the birthday party; his relations with Namita before and after the Birthday party, letters exchanged between the accused and Namita and the apology, if any, tendered by the accused with regard to his conduct;

D. Arrangement for conducted tour to Brussels; departure from London on the morning of 27.5.79 and reaching Brussels in the evening; sight-seeing tour of Brussels by the accused and Namita on the evening of 27.5.79 and return to the Hotel;

E. Visit of the tour guide, Richard Anthony Cushnie (PWUK-12) in the morning of 28.5.79 when the accused told him about his decision to stay back; the manner in which the accused dealt with the Pantry clerk, Benselin Myriam (PWBG-24) who wanted to enter his room to check the refrigerator; visit of the chamber maid, Ms. Mujinga Maudi (PWBG-22) for the purpose of cleaning the room and her observations about the condition of the accused at that time; the condition in which the room of the Hotel was found and request of the accused for his stay in the hotel for extra night; and what these point out to ?

F. The arrival of the accused in London without

A Namita; his explanation given to the parents of Namita regarding Namita's disappearance from Belgium; his conduct at the time accompanying father of Namita to Acton P.S. to report about Namita's disappearance and his alleged escape
B by jumping into a running bus; and if these circumstances are of any effect ?

G. Recovery of parts of human body on the morning of 29.5.79 and subsequent recovery of torso from the lake on 2.8.79.
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H. Collection of evidence pertaining to the crime from room No. 415 of Hotel Arenberg, Brussels and reports of the forensic tests connecting the recovery of the murder.
D

I. Report of the post mortem in respect of the parts of the human body recovered on 29.5.79 and other evidence showing that the dismembered parts were that of Namita.

E J. Evidence connecting the torso to be of Namita.

K. Evidence collected from the suitcase allegedly brought by the accused to London establishing that the blood in the suitcase was of Namita.

F L. Other evidence in the form of recovery of clothes and shoes of Namita along with dismembered human body.

M. Absconding of the accused and the efforts made
G by the police in apprehending him vis-à-vis explanation given by the accused in that regard.

N. Reference received from Belgium Government for extradition of the accused and subsequent abandonment of the request and sanction granted
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by Central Government for prosecution of the accused in India. A

O. Other facts referred to on behalf of the accused breaking the chain in circumstantial evidence."

13. The learned Additional Solicitor General then drew our attention to the findings of the trial court on each point. He drew our particular attention to Point 'C' relating to the resentment of the respondent to the friendly behaviour of Namita towards the other men in particular PWUK-23 at the birthday party. These facts, according to Mr. Malhotra, were found to be proved by the trial court which provided strong motive to the respondent for committing the murder of his wife. According to Mr. Malhotra, this finding has been wrongly reversed by the High Court. Point 'D' related to the behaviour of respondent and his wife Namita in the coach. Mr. Malhotra laid special emphasis on Point 'E' which related to the respondent's behaviour as observed by PWUK-12, PWBG-22, and PWBG-24. He submitted that the trial court had elaborately considered the evidence of these witnesses and rightly concluded that the respondent had murdered his wife by strangulation and thereafter he had mutilated her body by disjointing the limbs from the joints. The conclusion of the High Court, according to him, is improbable. B C D E

14. In summing up Mr. Malhotra submitted that there is conclusive evidence to prove that it was the respondent who committed the murder of his wife. Having committed the murder he discarded the body parts as narrated above. Mr. Malhotra had placed strong reliance on the cumulative effect of the circumstances established on the record. He relied on the following facts: – F G

(1) Namita was last seen alive in the company of the respondent on the night intervening 27/28th May,1979

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A (2) The respondent floated the false defence about the Namita having left him in the morning of 28th May, 1979.

(3) He did not make any complaint to the Belgium Police.

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(4) He did not inform either the tour guide or any staff member of the hotel about his wife having voluntarily left.

C (5) He made no efforts to trace his wife for two days.

(6) He deliberately stayed in the hotel on 28th and left for U.K. on the 29th May, 1979. At the same time the body parts were discovered in the rubbish container which is only two hundred meters away

D from the hotel.

(7) The body parts recovered from the rubbish bin have been identified to be those of Namita by reliable expert evidence.

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(8) The cloth recovered in the rubbish bin had been identified to be those of Namita.

(9) The blood group of the body stains found in the bathroom matches the blood group of Namita.

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(10) The palm prints of the palm recovered from the rubbish bin match the palm print of Namita.

(11) The torso recovered has been identified to be that of Namita from Vergote lake which is only

G seventeen minutes walking from the hotel.

(12) Therefore, there is scientific evidence to establish the identity of the victim to be that of Namita.

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(13) He ran away from the father of the deceased at the first opportunity that he got. A

(14) He remained absconding and hiding for a period of four years till he was discovered.

15. On the basis of the aforesaid, learned Additional Solicitor General submitted that the judgment of the High Court deserves to be set aside and judgment of the trial court ought to be restored. B

16. Mr. Aggarwal, on the other hand submitted that - C

(i) The prosecution has miserably failed to establish any motive for the alleged crime. There is no material even to indicate what weapon was used by the respondent in the commission of the crime. He emphasised that no weapon of offence was either recovered or produced during the trial. D

(ii) The prosecution case is based only on hypothesis. First such hypothesis is based on the opinion of the doctor, who conducted the postmortem examination. This doctor had stated that it was evident that the dismemberment of the body parts of the victim was committed by a professional doctor or a butcher, who knows the anatomy of the human body. This could be done with the aid of certain surgical instruments which could have been carried by the respondent with him as he was an Orthopedic Surgeon. E F

(iii) The other possibility floated on behalf of the prosecution was that as the body parts had been simply disjointed at the various joints, it could be done by using a fork and a butter knife, which would be available to the respondent in the hotel room. G

(iv) Mr. Aggarwal had pointed out that it would have H

A been virtually impossible for the respondent to have carried surgical instruments with him through international borders without the same coming to the notice of the customs authorities. Giving the sequence of events, as projected by the B prosecution, it would have been impossible for the respondent to have procured the surgical instruments within the city of Brussels.

(v) Learned counsel had also pointed out the impossibility of mutilation of the body simply by C using a butter knife and a fork.

(vi) Mr. Aggarwal had next pointed out that if the murder had been committed during the intervening night of 27th/28th May, 1979 in room no. 415, i.e., D fourth floor of the hotel, where many other guests of the tour group were staying, at-least, someone or the other of the guests should have heard the screams of the victim. The dismemberment of the body must have caused some tangible noise which E could easily have been heard by any passer by.

(vii) He had next submitted that the prosecution has not given any clear version as to how the body parts were removed from the hotel to the different locations where they were discovered. The F prosecution has failed to produce any material objects to demonstrate how the body parts were shifted from the hotel room to the rubbish container. The prosecution had suggested that the body parts had been removed in the red suitcase (Ex.CW/26).

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(viii) Mr. Aggarwal had pointed out that not a single witness was produced by the prosecution who might have seen the respondent carrying the red suitcase from the hotel to the container lying at a

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distance of about two hundred meters from the hotel or to Vergote canal/lake.

(ix) Even otherwise, he had pointed out that the body parts would not have fitted in the suit case. The length of the suitcase was measured 67.5 cms. while the torso measured 69 cms. He had also pointed out that the torso was recovered more than two months after the incident which would indicate that it was thrown into the lake by someone much later than 28th May, 1979 or a few days prior to 2nd August, 1979. If the torso had been thrown in the lake on or around 28th May, 1979, it could not have remained submerged for two months and would have appeared on the water surface within a few days of its disposal.

(x) It was further pointed out by Mr. Aggarwal that other parts of the body remained untraced even till the time of trial.

(xi) With regard to the respondent's return to England, the learned counsel had pointed out that if the intention of the respondent was to escape, he would not have drawn only 200 pounds from the joint account, which in fact had a balance of over 800 pounds. The amount withdrawn by the respondent would not have been sufficient even to buy a ticket back to India. He had pointed out that Namita's air ticket from London to Delhi (Ex.CW/3) had been purchased for 350 pounds.

(xii) Learned counsel then pointed out that the prosecution theory about the respondent's return to his in-laws' home to collect his certificates is quite implausible in as much as duplicate certificates are easily available (and were in fact obtained by the respondent).

(xiii) Making a reference to the material on the record, the counsel had pointed out that the certificates were in fact not found inside the respondent's suitcase at all in the inventory of the contents of suitcases drawn up in Belgium.

(xiv) It was the case of the defence that even according to the parents of Namita, respondent had returned to their home to pick up his belongings. This, according to the learned counsel, would not be the rationale behaviour of a guilty individual, who would not have risked returning to their house for the sake of his clothes. In fact according to Mr. Aggarwal, respondent had no need for any clothes. He had a suitcase full of clothes with him in Belgium. He in fact returned to his in-laws home for discussion/ confrontation with the parents of Namita and to decide his future course of action.

(xv) On his return, he found the behaviour of his mother in law very hostile. This is clear from the evidence of PWUK-2 which indicates that the family tried to search him. He was in the house for more than three hours having arrived at 2 p.m. The missing persons report lodged by PW-48 is timed at 5.30 p.m.

(xvi) The respondent had no intention according to Mr. Aggarwal, to escape. He submits that the entire incident within the in-laws' house has been fabricated to suit the prosecution version, which is belied by the inconsistencies in the narration of events by the family members. He made references to relevant portions of the statement recorded by PWUK-1, PWUK-2, PWUK-3 (on commission) and PW-48, in the trial court. Similarly, according to Mr. Aggarwal, the prosecution version is belied by the conduct of the respondent at the Acton Police Station where the missing person's report was

lodged. The respondent had duly informed the police officer of the fact that Namita had walked out on him at 6.00 a.m. on 28th May, 1979. On this basis, the missing person's report was lodged by PW-48. The respondent's explanation regarding the circumstances in which Namita left him was made known to PWUK-17, Nicolas Linfoot, Sergeant Officer, Police Station, Acton. He had also given the evidence on commission which was available at the trial. In his statement on commission, PWUK-17 disclosed that the respondent was nervous and agitated during the interview. He specifically returned to the police station after they had walked out of the station to complain that he felt threatened by his in-laws and expecting trouble from them.

(xvii) Mr. Aggarwal then pointed out various events to show that the respondent was never intending to either hide or abscond. Undoubtedly on 28th May, 1979, he jumped on a running bus to get away from his father-in-law as he was apprehensive of an altercation with him. It is also pointed out by Mr. Aggarwal that respondent had already informed PW-48 that he would prefer to stay at the YMCA, where he actually stayed till 30th May, 1979. If the respondent had a guilt conscience and wanted to abscond, there was no reason to return to England. He could have let to a safe place directly from Belgium.

(xviii) With regard to the letter written to the Prime Minister, he points out that these letters and telegrams to authorities were sent as he apprehended threat to his life and false implications. He, therefore, sought protection of the authorities. Respondent had even produced witnesses from the village where he was practicing

A medicine, who stated that he had clearly disclosed his full name. He stayed in the village Bansi for three-four years.

(xix) Mr. Aggarwal, therefore, submits that the appellant B did not want to reside at Turkpur to avoid the social stigma. He feared of retribution and false implication. His fears were not without any basis. The trial court record shows that on 14th October, 1992, two years after his second marriage, an C attempt was made on his life while he was in his clinic at Kharkhoda.

(xx) Mr. Aggarwal then pointed out that while recording evidence on commission, the Belgium authorities did not comply with the provisions of the Criminal D Procedure Code (Cr.P.C.), 1973 and the Indian Evidence Act, 1872. This was in spite of the specific directions given by the trial court to both the parties to carry the relevant provisions of law with them to ensure compliance with the Indian law. In fact the E requisition for commission sent to the Belgium Court specifically requested that the procedure prescribed under Sections 135-159 of the Indian Evidence Act and that of Section 162 of Cr.P.C. be followed.

F 17. Learned counsel also pointed out to numerous inconsistencies and contradictions in the evidence of the prosecution witnesses and submitted that the High Court has rightly concluded that the prosecution has failed to establish the guilt of the respondent beyond reasonable doubt.

G 18. We have examined the submissions made by the learned counsel for the parties, particularly keeping in view the gruesome nature of the crime and the complexities presented in the investigation, as also at the trial of this particular case.

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19. Undoubtedly, this case demonstrates the actions of a depraved soul. The manner in which the crime has been committed in this case, demonstrates the depths to which the human spirit/soul can sink. But no matter how diabolical the crime, the burden remains on the prosecution to prove the guilt of the accused. Given the tendency of human beings to become emotional and subjective when faced with crimes of depravity, the Courts have to be extra cautious not to be swayed by strong sentiments of repulsion and disgust. It is in such cases that the Court has to be on its guard and to ensure that the conclusion reached by it are not influenced by emotion, but are based on the evidence produced in the Court. Suspicion no matter how strong can not, and should not be permitted to, take the place of proof. Therefore, in such cases, the Courts are to ensure a cautious and balanced appraisal of the intrinsic value of the evidence produced in Court.

20. In our opinion, the High Court has examined the entire evidence dispassionately and with circumspection. It has noticed that the evidence produced by the prosecution in this case is purely circumstantial. The principles on which the circumstantial evidence is to be evaluated have been stated and reiterated by this Court in numerous judgments. We may notice here the observations made by this Court, in the case of *Hanumant Govind Nargundkar Vs. State of M.P.*[1] on the manner in which circumstantial evidence needs to be evaluated. In the aforesaid judgment, Mahajan, J. speaking for the Court stated the principle which reads thus:-

> "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

1. 1952 SCR 1091.

A 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
B that within all human probability the act must have been done by the accused."

The aforesaid proposition of law was restated in the case of *Naseem Ahmed Vs. Delhi Admn*[2], by Chandrachud J. as
C follows:

"This is a case of circumstantial evidence and it is therefore necessary to find whether the circumstances on which prosecution relies are capable of supporting the sole inference that the appellant is guilty of the crime of which
D he is charged. The circumstances, in the first place, have to be established by the prosecution by clear and cogent evidence and those circumstances must not be consistent with the innocence of the accused. For determining whether the circumstances established on the evidence raise but
E one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstances. Individual circumstances considered in isolation and divorced from the context of the over-all picture emerging from a consideration of the diverse circumstances and their
F conjoint effect may by themselves appear innocuous. It is only when the various circumstances are considered conjointly that it becomes possible to understand and appreciate their true effect."

21. We are of the opinion that the High Court was fully alive
G to the aforesaid principles and has assessed the evidence in the correct perspective. Upon consideration of the factual and the legal position, the High Court summed up the final conclusion. We are unable to accept the submission of Mr.

H 2. (1974) 3 SCC 668.

Malhotra that the conclusions reached by the High Court are not plausible conclusions. Thereafter, the High Court systematically and chronologically examined the series of incidents/circumstances relied upon by the prosecution to establish the guilt of the respondent.

22. It would be appropriate to discuss these incidents/ circumstances under different headings.

Motive

23. Upon consideration of the evidence on record, the High Court concluded as follows:-

> "Bearing in mind the legal position emerging out of the said authorities and having regard to the totality of the facts and circumstances which can be said to have been established on record, it is not possible to infer any motive on the part of the appellant what to talk of a motive so strong to commit the crime."

In assessing the evidence, the High Court was aware of the legal principles that absence of motive may not necessarily be fatal to the prosecution. Where the case of the prosecution has been proved beyond reasonable doubt on the basis of the material produced before the Court, the motive loses its significance. But in cases based on circumstantial evidence, motive for committing the crime assumes great importance. In such circumstances, absence of motive would put the Court on its guard to scrutinize the evidence very closely to ensure that suspicion, emotion or conjecture do not take the place of proof (See *Surinder Pal Jain Vs. Delhi Administration*[3] and *Tarseem Kumar Vs. Delhi Administration*[4]).

We may also notice here the observations in *Subedar*

3. 1993 Supp (3) SCC 681.
4. 1994 Supp (3) SCC 367.

A *Tewari Vs. State of U.P.*[5] wherein it has been observed that -

> "The evidence regarding existence of motive which operates in the mind of an assassin is very often than (sic) not within the reach of others. The motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to the evil thought in the mind of the assassin."

Again reiterating the role played by motive in deciding as to whether the prosecution has proved the case beyond reasonable doubt against an accused, this Court in the case of *Suresh Chandra Bahari Vs. State of Bihar*[6] held as under:-

> "Sometimes motive plays an important role and become a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act with illegal means with a view to achieve that intention. In a case where there is motive, it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But the evidence bearing on the guilt of the accused nonetheless becomes untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime."

In our opinion, the conclusion recorded by the High Court is in accordance with the aforesaid principles. Merely because the respondent objected to the behaviour of Namita towards her male friends at the birthday party of her sister Shiela would not be sufficient to hold that the appellant had the necessary motive to kill her. It is inconceivable that the respondent would have

5. 1989 Supp (1) SCC 91.

6. 1995 Supp (1) SCC 80.

married Namita only for the purpose of committing her murder, that too on the very first night of their honeymoon. Both the trial court and the High Court, in our opinion, have correctly recorded the conclusion that it was in fact in the interest of the respondent that Namita had remained alive. The success of his very objective to remain permanently in England was dependent on the continuance of his marriage for at least another year.

24. We are also not much impressed by the submission of Mr. Malhotra that the simmering resentment which was caused by Namita's refusal to consummate the marriage would be sufficient to impel the respondent to commit her murder. In our opinion, the High Court has correctly concluded that the two letters Ext.CW-13 and Ex.CW-14 exchanged between Namita and Mahender would tend to show that respondent was in fact trying to make amends after the birthday party on 5th /6th April, 1979. There was no untoward incident thereafter. It is accepted by all that the marriage was duly registered on 26th May, 1979 and that the couple voluntarily left for the honeymoon.

25. The trial court upon examination of the entire evidence had in fact concluded that something had gone amiss in the hotel room occupied by Mahender and Namita on the night of 27th/28th May, 1979. If that be so, the High Court rightly concludes, that this fact alone would contradict the theory of respondent having any pre-meditated strategy or design for committing the murder of his wife. The High Court correctly concluded that "it is highly improbable to comprehend that respondent had a predetermined mind or motive to cause the death of Namita on the honeymoon night itself at the first available opportunity of being in the company of the deceased in a closed room as suggested by the prosecution. Had the attitude of the parties been as suggested by the prosecution, they would not have agreed to a marriage followed by a honeymoon trip outside London." The High Court also noticed that there was nothing to suggest that Namita or her family

A members had apprehended any harm or threat to life of Namita at any stage till the couple left for the honeymoon on morning of 27th May, 1979. The High Court found it impossible to accept the prosecution theory that the respondent had married the deceased only with a view to do way with her to take B revenge for her appalling behaviour at Shiela's birthday party. Had the respondent been so resentful, there was no question of the marriage being solemanised.

LAST SEEN CIRCUMSTANCE/EVIDENCE -

C 26. On this issue, the High Court has merely recorded that the respondent has not disputed that Namita was with him in the room throughout the night. This position is also maintained by Mr. Aggarwal before us. The respondent had, however, claimed that Namita had left him at 6.35 a.m., in the morning D of 28th May, 1979. The High Court upon examination of the evidence of the Manager of the Hotel concluded that it was not possible to hold that Namita was seen alive by anyone in the morning of 28th May, 1979. The High Court, therefore, observed that it was for the respondent to explain about her E disappearance.

27. The explanation given by the respondent consistently from the beginning is that Namita had left him voluntarily early in the morning of 28th May, 1979. It is also his case that she married him only under pressure from her parents. She had F purchased a new suitcase in which she packed most of her clothes immediately upon returned from the "Brussels by Night" tour. The red suitcase with which she had traveled from London to Belgium was left with the respondent containing some of her clothes. This suitcase even though had a blood stain was G carried back to the house of Namita's parents by the respondent himself. It seems inconceivable that a person who has committed the murder of his wife and has used the aforesaid suit case for storing and carrying the body parts would bring it back to England risking his own safety. The respondent H also narrated before the police that his wife had left him

voluntarily on the morning of 28th May, 1979. This fact was further reiterated by him in the letter to the Prime Minister of India which runs as follows :-

> ".....After seeing these historical places we reached to our room. We took our bath and she gave me half currency my passport and ticket to me. She asked me to go out for a while and then came with new suitcase. She accommodated the maximum articles possible in that and left the rest in the suitcase which she took with her from her house. Then she told me that dear Mahendra I want to tell you something very important and that is "I have married you just for the sake of my parents for which they were pressing me. Now I will think about my future and you also should think about your own future. Do not object me for anything" saying this she went out and asked me not to follow her. I waited till morning when the Cosmos Coach guide came to room and asked to get ready for the further tour but I told him that I am waiting for my wife because she has gone out."

28. In our opinion, the last seen evidence would not necessarily mean that the respondent had killed his wife. Given the previous attitude of Namita, it is quite possible that she had walked out on her husband.

EVENTS ON THE MORNING OF 28th May, 1979 -

29. The most important circumstance relied upon by the prosecution relates to the state of affairs which existed in Room No.415 of Hotel Arenberg and the behaviour pattern exhibited by the respondent on the morning of 28th May, 1979. This was sought to be proved by the evidence given by three witnesses, namely, PWUK-12 Richard Anthony Cushnie, PWBG-22 Mujinga Maudi and PWBG-24 – Benselin Myriam. The High Court notices that the prosecution had sought to project through these witnesses a certain state of affairs to prove that the respondent had a guilty mind.

A 30. The High Court rejected the evidence of the tour guide (PWUL-12) as being inconsistent. The High Court notices that this witness had gone up to room no.415 to inform the couple that the tour party was ready to leave. He knocked on the door. It was half opened by the respondent. He found the respondent B was perspiring but at the same time assumed his behaviour to be quite normal or non exceptional. The High Court also notices that this witness had prepared two reports Ext.CW42/ A and CW42/B after the termination of the tour. None of the two reports make any mention about the abnormal behaviour C of the respondent. These reports rather indicate that the witnesses must have been in a hurry when they visited room no.415 and could not have talked to the respondent for more than a couple of minutes. In fact, in one of the reports, this witness mentions the fact that the father-in-law of the respondent D had told him that Namita had abandoned the respondent on the morning of 28th May, 1979. In our opinion, the High Court was justified in concluding that this statement would support the defence plea.

31. We may also notice that this witness in his cross E examination clearly stated that 1979 was his first year as a tour courier. He accepted that portion of the report (marked 8) was written by him. The aforesaid portion contained the words "It could be that the wife left very early and the arranged marriage giving her the opportunity. It is conceivable that the girl left early F in the morning. The arranged marriage having given her opportunity to leave home and make a life on her own and therefore satisfy the desires of both parties." He also stated in the cross examination that on his visit to room no. 415, he could not have remained with the respondent much more than 2 G minutes. He goes on to say that "at the time the coach was waiting, we were anxious to be away. I did not enter the room at any stage during that period of 2 minutes. I did not try and peep inside the room." Such being the state of affairs, we are unable to accept the submission of Mr. Malhotra that the High H Court wrongly discarded the evidence of this witness.

32. In rejecting the evidence of PWBG-22 Majinga Maudi, the High Court noticed that this witness was examined by the police on a number of occasions, but she could not even give the correct room number. She actually stated that she visited room no.410. The High Court also concluded that from her evidence it becomes apparent that the respondent did not even put a latch on the door nor did he take any extra precaution to keep the room closed. This witness was able to enter the room without knocking. Mr. Malhotra, however, laid considerable emphasis on the part of the statement that when she entered the room she saw the respondent sitting on the bed with hands on his face and she thought him to be sick. This witness also stated that she wanted to open the curtains of the window but the respondent did not allow her to do so. According to Mr. Malhotra, this would clearly indicate that the respondent was deeply distressed and disturbed. Mr. Malhotra also emphatically reiterated that this witness proved that the bathroom was totally soaked with water and there were wet towels on the floor of the bathroom. When she was cleaning the room, the respondent did not leave her for a second. The High Court, however, notices that this witness did not find any incriminating article like the body or body parts either in the room or in the bathroom, nor she found even a trace of blood on the carpet or on the wall. This witness had herself stated that the respondent had left the room unattended knowing perfectly well that this witness could enter the room in his absence. We do not accept the submission of Mr. Malhotra that the cause of respondent's distress was the murder that he had committed. It could equally be the distress of a husband whose wife deserted him on the honeymoon. In our opinion, the High Court has correctly assessed the evidentiary value of the statement of this witness.

33. The other witness relied upon by the prosecution was PWBG-24 who wanted to enter the room in order to take the inventory of the mini bar. He was, however, not permitted to do so by the respondent. The High Court notices that the earlier

witness had actually stated that he had come inside the room and he had talked to her.

34. From the above, it becomes apparent that it was only on a very careful consideration of the evidence of all the witnesses, the High Court concluded that the behaviour of the respondent cannot be said to be consistent only with the guilt of the respondent. In our opinion, the High Court correctly notices that no explanation was forth coming as to where the body or dismembered body parts could have been concealed by the respondent throughout the night of 27th/28th May,1979 as well as the morning and the afternoon of 28th May, 1979. The High Court notices that it is the case of the prosecution that the body parts were disposed of after the evening of 28th May, 1979. The suggestion of the prosecution that the body might have been kept either in the cupboard or under the bed was correctly held to be conjectural.

RECOVERY OF BODY PARTS FROM THE RUBBISH CONTAINER AND THE IDENTIFICATION THEREOF -

35. The next circumstance relied upon by the prosecution to connect the respondent with crime is the recovery of body parts allegedly of Namita viz. head, severed upper and lower limbs minus thigh portion from a refuge container lying at Rue De Loxum in the morning of 29th May, 1979 and that of torso from Vergote Lake, Brussels on 2nd August, 1979. Certain pieces of clothings and a shoe were also recovered form the rubbish container which according to the prosecution had also belonged to Namita. The body parts were recovered by a rag picker namely Verbeleen Marcel, PWBG-6. He had been looking for some lead or copper in the rubbish container for selling. Instead, he found a packet which was wrapped with a black pullover containing an arm in the shape of a hand without fingers, two arms cut into four pieces. On seeing such a sight, he became nervous and called the police. Responding to his call, two policemen arrived. PWBG-13, Van Eesbeek Pierre,

a police officer of Brussels on reaching the site looked into the waste container and found a pair of legs and the feet. These remnants were wrapped in chiffon and inside a plastic bag. The other witness of the recovery is PWBG-21, Vindevogel Rene. He has stated that he had accompanied PWBG-13, Van Eesbeek Pierre. They had found in the container, inside a cardboard box, two pieces of arms and on further search found a red cloth wrapped packet with plastic and when he opened it, a head rolled down. According to him, his colleague found one of the two legs and the feet in other side of the container, also packed in a red fabric. The High Court, therefore, concluded that only one piece of clothing found near the body parts was a black pullover and some red fabric, which might have been used for wrapping the body parts. These witnesses did not speak about the recovery of any other clothing or shoes as is sought to be proved through PWBG-8 Nelissen Urbain, PWBG-14 Etienne Martin, PWBG-25, Lecerf Jacques, PWBG-27 Pissoort Jean and PWBG-28 Dooms Jeanean. It is noticed by the High Court that none of these witnesses except PWBG-28 Dooms Jeanean speaks about the recovery of any clothing or shoe from the site of recovery. In fact PWBG-28 Dooms Jeanean could not speak with certainty as to what garments or shoes were discovered from the container. The High Court further notices that the details of clothing and shoes do not find mention in the report of the police dated 30th May, 1979. The report simply mentions that there were several pieces of ladies' clothing which were seized and would be described in a special report. It appears that no contemporaneous report of recovery of these clothings was prepared. The report was subsequently prepared on 8th June, 1979 in the form of an inventory of items found on 29th May, 1979. These for the first time specified a pink brown cardigan covering the legs, a black pullover and red fabric which are described by the witnesses. The High Court also notices that the police had already collected and seized various articles and things from the house of PW-48, Mr. Lochab in London on 5th June, 1979, 6th June, 1979 and 7th

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June, 1979.

36. In our opinion, the High Court has reached the appropriate conclusion that the possibility of these garments and articles having been planted by the police by obtaining the same from the house of Namita with the object of fixing the identity of the body parts belonging to Namita by means of the clothes can not be ruled out. It is noteworthy that no contemporaneous recovery memo was prepared by the police on 29th May, 1979 itself. There was omission of the details of the allegedly recovered clothes in the statement of the witnesses. Articles had already been seized from the house of Namita on three consecutive days 5th, 6th and 7th June, 1979. The Special Report containing the inventory of the clothes is dated 8th June, 1979. It is in this report that clothes are mentioned for the first time. We are unable to accept that even in the face of such material, the conclusion reached by the High Court is not plausible.

37. We may also notice that prosecution had allegedly recovered the clothes Namita had taken on the trip. Namita's wedding dress was stated to have been recovered as part of the clothings. The High Court, in our opinion, correctly observed that ordinarily a woman would not carry her wedding dress on her honeymoon trip. The High Court also notices that though the prosecution had taken custody of all the clothes which Namita had taken with her on the honeymoon trip, they were not produced at the trial for identification by the witnesses. Only photographs of the clothings, which had been allegedly taken on 12th June, 1979 i.e. after 16 days, were produced.

38. Mr. Malhotra had, however, submitted that these clothes were torn, lacerated in blood stains and, therefore, must have withered away into waste beyond recognition. In our opinion, the High Court has correctly taken view that the prosecution was duty bound to produce the clothings at the trial. It was through these clothings and articles that the prosecution

had sought to establish the identity of the deceased. The High Court, in our opinion, correctly recorded the conclusion that on consideration of the relevant evidence of the witnesses and various documents on record, the prosecution had miserably failed to establish the recovery of clothes or shoes by means of any cogent and reliable evidence. The High Court also held that the identification of the clothings and shoes as belonging to Namita through the testimony of PW-48 Jagdish Singh Lochab and PWUK-2 Amita Lochab was not sufficient to discharge the burden of proof which lay on the prosecution. The High Court notices that the identification of the shoes by Mr. Lochab could not be definitely said to have made in the presence of any police officer. Mr. Lochab was unable to remember if any police officer was present or not at the time of the identification. In the first instance, he had stated that the officer had recorded his statement and he had signed the same with regard to the identification of the clothes. However, in the same breath, when confronted with the previous statement made to the Belgium Investigation Authorities, he denied it. The High Court also notices that there was no mention of any identification test of clothings having been made by these witnesses. In our view, the High Court had drawn the only logical conclusion from the aforesaid that this witness was not consistent so far as the identification of the clothes are concerned. The prosecution did try to prove that the shoes recovered were only purchased in Britain and that it had been purchased from Top Shop. The High Court observed that the test identification of the property has not been done in accordance with certain well settled legal parameters. Certain safeguards had to be observed to rule out the possibility of any doubt or confusion. Apart from the technical objections with regard to the test identification, the High Court adversely commented that only photographs of the clothes were produced. We, therefore, find no merit in the submission of Mr. Malhotra that the clothes had been definitely identified as belonging to Namita.

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A **IDENTITY OF THE BODY PARTS**

39. This now brings us to a vital segment of the case which had to be proved by the prosecution i.e. identity of the body parts recovered on 29th May, 1979 and 2nd August, 1979 as that of Namita. To link the body parts to Namita, the prosecution had examined a number of witnesses. Heavy reliance was placed by the prosecution on the report of the postmortem examination conducted by Dr. Rilleret (since dead) and PWBG-4 G. Voordecker, Forensic Pathologist. The prosecution also relied on the evidence of PWBG-5 Lambert Claudine and Stomatologist PWBG-20 Wackens Georges, who had examined the dental specifics of the body and the report of finger/palm prints experts. The other witnesses relied upon by the prosecution were PWUK-1 Smt. Chandermukhi Lochab and PW-48 Jagdish Singh Lochab, i.e. mother and father of Namita. They gave description of certain identification/special marks which Namita had on her person. According to Jagdish Singh Lochab (PW-48), Namita was about 5'-4" of height, the hair of her head were black, she had 31 teeth instead of 32 as one tooth had been extracted at young age; she had a scar on her right knee, had a fracture of her left wrist and had a smallpox inoculation mark on her left upper arm. PWBG-4 Voordecker Guy has concluded its report as under:-

(i) The victim had been strangulated.

(ii) The hair of the victim were black.

(iii) *The victim was a young woman of non-white race of a height of 1 meter 60 cms. (Emphasis supplied)*

(iv) The victim had a special feature at the teeth level i.e. the existence of a single upper central incisor tooth.

(v) An old Coutaneous triangular cicatricies mark of

three centimeters was there on the surface of right knee cap.

(vi) There were burns on the chin at the left retro articular region and also on the limbs, on the left and right arms and left forearm. These burns appeared to be caused after death.

(vii) The dislocation of the body was work of a doctor/ surgeon or a butcher.

(viii) The autopsy was done on 29th May, 1979 and the death took place within 48 hrs.

(ix) *The autopsy was carried out on 29th May, 1979 but report submitted on 11th December, 1979.*

(x) The examining doctor could not say if there were vaccination marks on left arm and callosities in the front side of the feet. (Emphasis supplied)

40. The Stomatologist PWBG-20 Wackens Georges concluded his opinion as follows:-

(i) That the body belonged to a person having feminine sex.

(ii) *It was of a person between 20 and 30 years of age who was of African or Indian origin. (Emphasis supplied)*

(iii) Left upper incisor was not there which might have been lost since long time.

(iv) The teeth were of a person who lived in an affluent social status.

41. Mr. Aggarwal has criticised the veracity of the aforesaid findings on a number of grounds which have also been considered by the High Court. Mr. Aggarwal has

A reiterated the submissions which were made before the High Court. He submits that the postmortem examination on the body parts recovered in the morning of 29th May, 1979 was conducted by Dr. Rilleret and Voordecker Guy on 29th May, 1979 itself. The report is given about seven months later on
B 11th December, 1979. In this report, the conclusions are as under:-

> " From all the findings we are entitled to admit that the (sick) considered human remains are of a *young woman of about 160 cms, of coloured race. (Emphasis supplied)*
> C
>
> The cuts were made after death by an individual who is apparently experienced in disjoining and who respected the anatomic characteristics.
>
> D The presence of bloodstains in the eyes makes us think a murder by constriction.
>
> The remains were burned superficially."

42. According to Mr. Aggarwal, the postmortem report was
E prepared after consultation with the father and sister of Namita. This fact is apparently mentioned on page 24 of the report of Dr. Rilleret. We may also notice that the postmortem examination of the torso/trunk portion recovered on 2nd August, 1979 was performed by Dr. Rilleret (since dead) and PWBG-
F 4 Voordecker Guy on 3rd August, 1979. On a comparison of the evidence gathered respectively on 29th May, 1979 and 2nd August, 1979, these witnesses have recorded the conclusion that "the human remains examined at the later date do correspond to the same body namely to the corpse of Namita
G Lochab."

43. The High Court upon considering the entire evidence relating to this issue, however, concluded that no reliance could be placed on the reports presented by the prosecution for the purpose of establishing the identity of the body parts as that of
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Namita. The High Court highlighted that P'WBG-20 Wackens Georges, Stomatologist had in the first instance stated on examination of the dental specificities of the body parts on 30th May, 1979, he recorded the report "X". However, subsequently he stated that he had given another report marked "A". He then tried to explain that the provisional report was marked "X" and the final report was marked "A". Upon comparison of the two reports, the High Court concluded that the two reports are wholly inconsistent. In the alleged provisional report, on the basis of the stomatological examination PWBG-28 Dooms Jeanean had concluded as under:-

> "*Female individual, at least thirty years old and of North African type.* Lived for a long time in a civilized, upper middle-class environment. Good education. Taking much care for her teeth. Regularly visited her dentist, who looks tidy, experienced and serious.
>
> The individual lacks one upper left central incisor and her left canine should have been rather conspicuous.
>
> The individual had probably a tic, such as biting her fingernails.
>
> This, and the other mentioned facts, suggest that the individual should be between 29 and 30 years old." (Emphasis supplied)

44. However, in the final report, the conclusions recorded were as under:-

> "*Individual belonging to the female sex whose age is presumed between 20 and 30 years and belonging to the North-African, Indian type. (Emphasis supplied)*
>
> Lived since long in a civilized society in a well off category. Had good education. Taking very good care of teeth and used to visit regularly her dentist. The later used to take good care of them regularly and seriously.

A The individual did not have a left upper central incisive and had a prominently visible left canine.

It may not be overlooked that the individual have had a habit, such as nibbling her fingers."

B 45. A perusal of the aforesaid clearly shows that in the report which was prepared contemporaneously, the experts had put the age of the deceased between 29 to 30 years. A perusal of the same shows that initially the report states that the individual was at-least 30 years old and of North-African type. C At the end of the report, it is stated that the individual should be between 29-30 years only. This opinion undergoes a change by the time a final report is prepared. It is now stated that the "Individual belonging to the female sex whose age is presumed between 20 and 30 years, and belonging to North-African Indian D type." The differences between the two reports are so glaring, understandably, the High Court was compelled to hold that the second report was clearly an afterthought and deliberate improvement over the earlier report. The High Court, in our opinion, appropriately concluded that this must have been E made to cover up the first report which did not connect the body parts with that of Namita in as much as age of Namita was stated to be around 25 years. In fact, it is a matter of record that Namita was born in 1956, that would make her only 24 years at the relevant time.

F 46. The High Court thereafter took up the issue with regard to the missing incisor tooth. We have noticed earlier that PW-48 Mr. Lochab had stated that Namita had 31 teeth instead of 32 as one tooth had been extracted when she was of a very young age. The High Court notices that in his earlier statement, G he had stated that another tooth had been fixed at the place of the tooth so extracted. This was done so that no anomaly existed in her denture. This witness was also not able to speak with certainty about the Namita having a scar on her right knee. The High Court also took note of the fact that this witness did

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not mention any of these identification marks at the time when he had lodged the missing report. He had rather stated that he was not aware of any visible marks or scars or other peculiarities of Namita. He was not even sure about the colour of Namita's hair as he had stated that her hair were dark brown. Contrasted with this, the evidence of the mother PWUK-1 was that one of the Namita's front tooth was missing. However, there was no gap in between the incisors. She had stated that Namita had a scar mark on her left knee. She also stated that Namita had three inoculation marks on her shoulder. The High Court notices that this witness was, however, not able to give details of any identification marks on her other children. This, in our opinion, would be sufficient to justify the conclusion reached by the High Court that neither the mother PWUK-1 nor the father PW-48 of Namita were exactly aware/sure of any identification marks of Namita. The High Court, therefore, observed that a possibility can not be ruled out that these witnesses may have given these marks after the disclosure of such marks in the postmortem examination's report. In fact, it may be noteworthy that no vaccination/inoculation marks have been found by the doctors, who conducted the postmortem examination.

47. Mr. Malhotra had, however, emphasised that the identity of Namita had been established from the comparison of palm prints found in the house of her parents and the palm prints of the body parts found in the rubbish container. The High Court examined this issue with due care and caution. It is noticed that PWUK-18 Christopher John Coombs, the finger print expert was not able to conclude that the evidence produced would connect the palm prints with the palm prints of Namita. The reports submitted by the doctors contained numerous discrepancies. This apart the identification marks given by the witnesses did not coincide with the reports. Therefore, the High Court concluded that no implicit reliance could be placed upon them for the purpose of establishing the identity of these body parts as that of Namita.

A **RECOVERY OF THE BLOOD FROM THE BATHROOM**

48. Mr. Malhotra had emphasised that the examination of the blood recovered form the bathroom and the blood group of Namita, both being identical, the High Court wrongly failed to rely upon the same. The High Court rejected the blood report on the grounds that report in many columns used the term "Nihil" meaning "No". The report also contained question marks, blank spaces at various places. The report suggests that it is merely a comparison of favorable characteristics. The experts did not provide any explanation in regard to the terms that had been used in the report. In fact, the High Court records a conclusion that the report used different methods i.e. ABO method and Gm method without giving any justification as to why the two different methods were used. Therefore, the High Court concluded that unfavorable characteristics/factors detected during the course of examination had been suppressed. The High Court also took note of the fact that the prosecution failed to place on record any cogent evidence with regard to the blood group of Namita. PW-48 only stated her blood group was 'O', but even he was not able to say whether it was 'O+' or 'O-'. The High Court quite appropriately observed, on the basis of the opinion of the examining experts, that more than fifty per cent population of Belgium has 'O' blood group. In such state of affairs, the High Court was constrained to conclude that the prosecution has not been able to establish even this limb by means of cogent and reliable evidence.

49. Mr. Aggarwal had also pointed out a number of other infirmities with regard to the non-comparison of a blood sample taken from the body parts recovered. He had pointed out that no reliance could have been placed on the analysis of the blood by PWBG-17. According to Mr. Aggarwal this witness had examined "crusts"/"lumps" of "dark red" blood. This, according to Mr. Aggarwal, would indicate that the blood belonged to a living person since it was coagulated and that the blood was fairly new. This in turn would lead to a reasonable

inference that the blood did not belong to Namita Lochab, in as much, as her blood should been "powdery" i.e. non-coagulated (belonging to a dead person). It should have been brownish black / black in colour as it would have been old blood, since it was recovered more than two weeks after the alleged dismemberment of her body in the bathroom. In support of the submission, Mr. Aggarwal had relied on Parikh's Textbook of Medical Jurisprudence Forensic Medicine and Toxicology, in particular on page 7.11 and 7.23. In the aforesaid textbook, it is stated as under:-

> "Character: Sometimes, it is possible to determine if blood came from (a) living or dead body (b) artery or vein (c) victim or assailant (d) infant or adult, and (e) male or female.
>
> Living or dead body: Blood which has effused during life can be peeled off in scales on drying due to the presence of fibrin. Blood which has flowed after death tends to break up into powder on drying."

The issue was raised before the High Court. The High Court, however, rejected the reports for the reason stated as not being intrinsically reliable.

50. We are of the considered opinion that there is no reliable evidence to indicate that the blood that was recovered from the bathroom of room no. 415 definitely belonged to Namita. It must be remembered that the only drop of blood that was found was at the base of the bidet, in the bathroom. The bathroom would be used successively by different tourists occupying the room. This apart, the very recovery of the blood stains from the bidet seems highly doubtful. It has come into the evidence of PWBG-19 Salomone Levy, the Manager of the hotel in whose presence the blood stains were allegedly lifted, that many tourists had occupied room no. 415 between 29th May, 1979 and 12th June, 1979. According to him, no tourists/ guests ever complained of any blood spot on the bidet. The first ever discovery of blood was stated to be on 12th/13th June,

1979, i.e., about 14 days of the alleged incident. If the blood stains lifted from the bidet were of a person who was killed on 28th May, 1979, the same could not be of red or red brown colour. The colour of the stain would have been blackish brown. It appears to us that the High Court was wholly justified in rejecting the evidence with regard to the recovery of blood from the bidet.

51. We now come to the final circumstances relied upon by the prosecution with regard to the conduct of the respondent after returning to England. We are of the considered opinion that the High Court was not correct in drawing an adverse inference against the respondent because he remained in hiding till he was arrested by the CBI. In this case, the subsequent conduct of the appellant is not consistent with the expected conduct of a guilty person. If the respondent had any intention of absconding, he could have done so initially after the alleged murder of his wife. He had no need to come back to England. Having come back he need not have gone directly to the house of his in-laws. Not only did he come back to England, he carried with him the red suitcase containing some of Namita's clothes. According to the prosecution, this suitcase had contained blood stains which had belonged to Namita. It is inconceivable that a person having a guilty mind would have been carrying such an incriminating article back to the house of his in-laws. As noticed above, he went back to India apprehending danger from his father-in-law and family. This apprehension of danger to his life at the instance of his father-in-law continued even in India. The fact that an attempt was made on his life had been duly recorded by the trial court. The respondent had been petitioning the police authorities as well as the Home Minister and the Prime Minister of India seeking protection. Evading arrest would certainly be an illegal act but it does not lead to the only conclusion that the respondent was hiding due to a guilty conscience. We may also notice here the observations made by this Court in the case of *Matru Alias*

Girish Chandra Vs. The State of Uttar Pradesh[7] which are as follows:-

> "The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused."

52. We are of the considered opinion that the respondent did not come out of hiding due to fear as also to avoid arrest by the police but it certainly can not be concluded that he was hiding because of a guilty conscience.

53. We may also notice here that according to the prosecution, dismemberment of the body parts was performed either with surgical instruments or with the aid of a butter knife and a fork. However, at the trial, the prosecution did not produce any evidence with regard to the recovery of any weapon of offence. Nor any weapon was produced in court, at the trial. Even according to the sequence given by the prosecution, it would have been impossible for the respondent to procure the surgical instruments in the city of Brussels during the night intervening 27th/28th May, 1979. It is a matter of record that the entire group of tourists did not return back to the hotel till after 11 O' clock during the tour "Brussels by Night". Namita

7. (1971) 2 SCC 75.

A was with him throughout the tour. Equally he could not have carried the surgical instruments with him without the same being noticed at the customs barriers. This apart, prosecution has miserably failed to establish that the respondent had any intention of committing the murder of his wife at the B commencement of the honeymoon trip. Even Namita's parents did not entertain any such apprehensions. It is also the prosecution case that something went amiss in room no. 415 during the night of 27th/28th May, 1979. Therefore, it makes the possession of surgical instruments by the respondent on C the fateful night in Brussels virtually impossible. We are also unable to accept that such severance of the body parts could possibly be achieved by use of a simple butter knife. It is simply too farfetched a notion to be taken seriously.

54. We are of the considered opinion that the conclusions D reached by the High Court would clearly show that the prosecution had miserably failed to connect the respondent with the alleged murder of his wife. The conclusions recorded by the High Court are fully justified by the evidence on record. We are, therefore, unable to agree with Mr. Malhotra that there has been E any miscarriage of justice in the facts and circumstances of this case.

55. Before we part with this judgment, we must place on record our appreciation of the very valuable assistance F rendered by Mr. P.P. Malhotra, the learned Additional Solicitor General and Mr. Siddharth Aggarwal, who appeared for the respondent.

56. We, therefore, find no merit in the appeal. The appeal is accordingly dismissed.

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D.G. Appeal dismissed.