

H.D. SIKAND (D) THROUGH LRS.

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v.

CENTRAL BUREAU OF INVESTIGATION AND ANR.

(Criminal Appeal No. 729 of 2011)

DECEMBER 15, 2016

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[PINAKI CHANDRA GHOSE AND AMITAVA ROY, JJ.]

Appeal: Murder case – Acquittal by High Court – Appeal against acquittal – Case totally dependant on circumstantial evidence – Prosecution failed to pass the test as laid down in Sharad Birdhichand Sarda’s case – High Court rightly ordered acquittal – Penal code, 1860 – s.302.

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Dismissing the appeals, the Court

HELD: The case in hand was totally dependent upon the circumstantial evidence. The prosecution failed to pass tests to bring home the guilt of the accused as laid down by this Court in **Sharad Birdhichand Sarda v. State of Maharashtra*. The findings recorded by the High Court were plausible, logical and persuasive, reached by the materials on record and command for affirmation. [Para 18] [219-A-D]

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**Sharad Birdhichand Sarda v. State of Maharashtra*
(1984) 4 SCC 116; 1985 (1) SCR 88 – relied on.

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Shahid Khan v. State of Rajasthan (2016) 4 SCC 96 –
referred to.

Case Law Reference

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(2016) 4 SCC 96 referred to Para 15

1985 (1) SCR 88 relied on Para 18

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 729 of 2011.

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From the Order dated 15.05.2009 by the High Court of Delhi at
New Delhi in Criminal Appeal No. 456 of 2008

WITH

CrI. A. No. 730 of 2011.

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A Sushil Kumar Jain, Sr. Adv., Janendra Lal, Ms. Yasmin Tarapore, Punit Jain (For M/s. Janendra Lal & Co.), P. K. Dey, Kumar Parimal, T. A. Khan, Andleeb Naqvi, Shreyasi Chakraborty, Ms. Reena Rai, Ms. Shilpi Dey, Mukesh Kumar Maroria, D. N. Ray, Sharvesh Singh, Aamir Khan, Samir Ali Khan, Advs. for the appearing parties.

B The Judgment of the Court was delivered by

C **PINAKI CHANDRA GHOSE, J.** 1. These appeals, by special leave, have been filed by the appellants challenging the judgment dated 15th May, 2009, passed by the High Court of Delhi at New Delhi in Criminal Appeal No.456 of 2008, whereby the High Court has set aside the judgment and order dated 28.04.2008 passed by the Additional Sessions Judge, Delhi, and acquitted Respondent No.2 of the charge of murder as also of the charges under Sections 3 & 4 of the Explosive Substances Act, 1908.

D 2. The brief facts of the case are that Rani Chaudhary got married to Sqn. Ldr. Pritam Singh and out of the wedlock, she had two daughters, namely, Mini and Maitri. After the death of her husband, she started living at D-5, South Extension, Part-I, New Delhi. Rani Chaudhary had acquaintance with Lt. Col. S.J. Chaudhary, who was a divorcee at that time. On 31.3.1971, Rani Chaudhary got married to Lt. Col. S.J. Chaudhary and out of this wedlock one daughter, namely, Sonali was born on
E 24.08.1972. Their marriage could not continue harmoniously, so Rani Chaudhary started living separately at her parents' house at Defence Colony, New Delhi, with effect from May, 1976. Lt. Col. S.J. Chaudhary continued to harass Rani Chaudhary. Rani Chaudhary filed a petition for divorce under Section 13(1)(1a) of the Hindu Marriage Act, in the Court
F of District Judge, Delhi, and on 6.12.1979, an ex-parte decree of divorce was granted in her favour. Accused S.J. Chaudhary after coming to know about the ex-parte decree, filed an appeal before the Delhi High Court on 5.03.1980. He also filed two petitions in the Court of Additional District Judge, Delhi, one for setting aside the ex-parte decree of divorce granted in favour of Rani Chaudhary and the other for restraining Rani
G Chaudhary from marrying Kishan Sikand. A restraint order was passed against Rani Chaudhary from marrying Kishan Sikand, pending decision of the divorce petition. On 6.1.1981, the Additional District Judge dismissed the petition for setting aside the ex-parte decree of divorce and also vacated the injunction order restraining Rani Chaudhary from
H remarriage.

3. On 9.01.1981, accused S.J. Chaudhary got another order from the High Court of Delhi restraining Rani Chaudhary from remarriage till further orders. This order was vacated by Delhi High Court on 17.03.1981 while dismissing the appeal filed by accused S.J. Chaudhary against ex-parte decree of divorce granted in favour of Rani Chaudhary. Since the accused S.J. Chaudhary had already gone in appeal before the Delhi High Court, against the order passed by the Additional District Judge on 6.01.1981, the said appeal was admitted and Rani Chaudhary was restrained from remarriage by the Delhi High Court. While disposing of the appeal on 14.09.1981, the Delhi High Court set aside the decree of divorce granted in favour of Rani Chaudhary and directed the parties to appear before learned District Judge for fresh hearing of divorce petition. Rani Chaudhary filed an appeal before this Court against the order dated 14.09.1981 passed by the Delhi High Court. This Court set aside the order dated 14.09.1981 passed by the Delhi High Court and restored the ex-parte decree of divorce granted in favour of Rani Chaudhary. After the divorce litigations between Rani Chaudhary and accused S.J. Chaudhary came to an end, Kishan Sikand (deceased) proposed Rani Chaudhary for marriage to which she agreed and they decided to marry after the divorce is granted to Rani Chaudhary and continued to live together in the house of deceased Kishan Sikand at 98, Sundar Nagar, New Delhi. Accused S.J. Chaudhary started threatening Rani Chaudhary and also lodged complaints on 29.9.1981 and 30.9.1981 at P.S. Lodhi Road and P.S. Hazrat Nizamuddin against Kishan Sikand for illegally keeping his wife with him. But Rani Chaudhary gave in writing that she had taken divorce from accused S.J. Chaudhary and that she was staying there as a paying guest out of her own free will and Kishan Sikand had not illegally detained her. The case of the prosecution is that the accused S.J. Chaudhary having lost his endeavour to win back his wife Rani Chaudhary, made up his mind to eliminate Kishan Sikand and so he procured the raw ingredients to manufacture a bobby trap bomb and using parts of a hand-grenade, he managed to manufacture a bobby trap bomb. This bobby trap bomb was converted into a parcel addressed to Kishan Sikand. On 2.10.1982, the said parcel, containing the bomb, was kept at the staircase leading to the first floor of 98, Sundar Nagar, New Delhi, in the rear portion whereof Kishan Sikand was residing along with Rani Chaudhary. When the said parcel bomb was opened by deceased Kishan Sikand, it triggered off resulting in an explosion and his instantaneous death.

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A 4. Post-mortem was conducted on the dead body of Kishan Sikand. The cause of death was opined as a result of haemorrhage, shock and injuries to vital organs caused by explosive device of hand grenade which were fatal.

B 5. First Information Report (FIR) was registered on the day of the incident itself on 2.10.1982. The investigation of the case was ultimately entrusted to the CBI on 19.3.1983. Accused S.J. Chaudhary was arrested by the Central Bureau of Investigation ("CBI") on 31.07.1983 during the course of investigation. Rani Chaudhary, who was at Sanawar (H.P.) on the day of the incident, returned to Delhi on the next day. Her statement under Section 161 Cr.P.C. was recorded on C 3.10.1982, wherein she informed the police about her turbulent marriage with the appellant and the divorce. She also informed the police that accused S.J. Chaudhary had been extending threats to her to compel her to return to him and that he had even been threatening Kishan Sikand. Apart from other persons whose statements were recorded during D investigation, the statement of one Suresh Gopal, a close friend of the deceased Kishan Sikand and Rani Chaudhary was recorded on 5.10.1982. Although the accused S.J. Chaudhary was a suspect from the very beginning but nothing incriminating against him could be gathered by the police before CBI had taken over. In support of their case, the CBI examined 76 witnesses and 8 witnesses were examined on behalf of the E defence. Thereafter arguments were heard and judgment reserved. On 28.04.2008, the Additional Sessions Judge, Delhi, delivered the judgment convicting accused S.J. Chaudhary (Respondent No.2 herein) under Section 302 of the Indian Penal Code and under Sections 3 and 4 of the Explosive Substances Act, 1908, and sentencing him to life imprisonment F along with a fine of Rs.5,000/- for offence under Section 302 IPC and to rigorous imprisonment for 10 years each under Sections 3 and 4 of the Explosive Substances Act, 1908.

G 6. Being aggrieved by the judgment dated 28.04.2008 of the Additional Sessions Judge, Delhi, Respondent No.2 filed criminal appeal before the Delhi High Court on the ground that he had inter alia been convicted only on the basis of circumstantial evidence and therefore he was entitled to the benefit of doubt. Shri H.D. Sikand, father of the deceased Kishan Sikand, filed an application for intervening in the said criminal appeal. The application for intervention was allowed and H.D. Sikand was granted permission to intervene in the matter but on H

12.03.2009, the intervenor Shri H.D. Sikand passed away. On 15.05.2009, the Delhi High Court, after hearing the parties allowed the criminal appeal filed by Respondent No.2, set aside the judgment and order passed by the Additional Sessions Judge and acquitted Respondent No.2 (Lt. Col. S.J. Chaudhary) of the charge of having committed murder as also the charges under Sections 3 & 4 of the Explosive Substances Act, 1908. Hence, these appeals, by special leave, have been filed against the acquittal of Respondent No.2 (Lt. Col. S.J. Chaudhary).

7. We have heard the learned counsel appearing on behalf of the parties and perused the judgment passed by the High Court as also the judgment passed by the Trial Court. Learned counsel appearing on behalf of the appellants in Criminal Appeal No.729 of 2011 submitted that after the explosion took place in the house of Kishan Sikand, the Delhi Police took over the investigation but except recording some statements and formal actions, did not do any worthwhile investigation. This is clear from the following:

(a) On 3.10.1982 Shri P.P. Koahar (PW-72) recorded the statement of Rani Chaudhary, Vijay Ram and Flaurance Homs and others. He also recorded statement of Suresh Gopal on 5.10.1982. He also recorded some statements on other days.

(b) On 4.10.1982, search was conducted of the premises i.e. 98, Sunder Nagar and the Investigating Officer took possession of the documents on 6.10.1982. He did not even prepare proper Memo of the said documents. All those documents are missing; and the documents said to have been recovered by PW-72 on 4.10.1982 are not the part of charge-sheet. During the cross-examination, R.P. Kochar, Investigating Officer himself admitted that from the very beginning he suspected the accused as he stated: "till the investigation was me, I could not collect clinching evidence to arrest the accused", "from the very beginning I suspected him to be the perpetrator of crime".

8. Learned counsel further submitted that even after the Court's order and search warrant issued for search of the house of Respondent No.2, only search was conducted by the police and thereafter the Investigating Officer did not do anything except collecting 75 type prints of different typewriters or specimens, which had no relevance with the crime. The police did it only to pretend that they were doing some

- A investigation. According to the Investigating Officer himself, it came to his knowledge that a parcel was spotted on the staircase on 25.09.1982 for the first time, but even after such fact came to his notice, he did not make any investigation and did not even record the statement of the person giving such information. When there was no proper investigation by the Crime Branch and the criminal remained undetected, on the request of the appellant, the case was transferred to the CBI and only thereafter the real investigation started and in this manner the precious time for collection of evidence was lost.

9. Learned counsel further submitted that there were strained relations between Rani Chaudhary and accused Respondent No.2 and despite best efforts to maintain her matrimonial ties with the accused Respondent, the accused Respondent continued to ill treat her and even tortured her both mentally and physically, forcing her to shift to Delhi. She was beaten to the extent of causing fractures of three bones. The accused Respondent threatened the deceased and Rani Chaudhary with dire consequences to the extent of bodily harming and killing Kishan Sikand on a number of occasions. The accused Respondent had the grudge and motive to kill Kishan Sikand. Learned counsel submitted that the marriage between Rani and accused Respondent could not continue harmoniously and accused Respondent used to physically assault and mentally torture Rani and on account of incessant harassment and physical torture by accused Respondent, Rani lodged a complaint with the concerned Army Authorities in February/March 1979. On coming to know about this complaint, the accused Respondent came to Delhi from Bangalore where he was posted and Rani was mercilessly beaten and she received injuries including fractures of 3 ribs on the left side. Rani lodged a report at the Police Station, Defence Colony and was medically examined at AIIMS. Mrs. Devender Kaur, mother-in-law of Rani (by the first marriage) also lodged a report at the Police Station and complained about the conduct of accused Respondent. It is also stated that the accused went to the house of Rani and confined her inside the house but she escaped by jumping out of the window, in the process she sustained sprain in her ankle. Thereafter, Rani filed a divorce petition on the ground of cruelty and torture. The Trial Court passed a decree of divorce which was set aside by the High Court and upon filing special leave petition, this Court on 24.08.1982 restored the decree of divorce passed by the Trial Court. In the meantime, Rani and Kishan Sikand became good friends and Rani started living with Kishan Sikand at 98,

Sunder Nagar, New Delhi. There was an understanding between them that they would get married after the divorce was finalized. The accused-Respondent threatened Rani not to live with Kishan Sikand and in case she did not move out of the house of Kishan Sikand, he would kill her and Kishan Sikand. The accused- Respondent also told H.D. Sikand, father of Kishan Sikand, to throw out Rani from his house, otherwise he would cripple Kishan Sikand by breaking his bones. The accused-Respondent also visited H.D. Sikand in the office and he was very annoyed at that time. Accused-Respondent also telephoned Kishan Sikand and told him that if he did not turn Rani out of his house within 24 hours, he would kill him. This was intimated by Kishan Sikand to Rani (PW-1), Sudhir Khanna (PW-10), H.D. Sikand (PW-19), M.M. Thapar (PW-37), Leelu Mool Chandani (PW-39) and Gajbir Singh (PW-44). The accused-Respondent gave Rani four options:

- (a) to live together
- (b) to separate peacefully
- (c) to separate in an ugly manner
- (d) to create total chaos

The accused-Respondent threatened that if she did not agree for one of the first three options then chaos would follow. This was recorded in tape recorder. The accused-Respondent lodged a false report in Police Station, Nizamuddin alleging that Rani has been forcibly confined by Kishan Sikand at his house. Om Sagar, Station House Officer went to the house of Kishan Sikand, met Rani and inquired from her if she was forcibly detained to which Rani replied in the negative and gave her statement in writing.

10. Learned counsel for the appellants further submitted that the finding recorded by the Trial Court regarding 'threat to deceased by the accused-respondent' and 'motive' are as follows:

Threat to deceased by the accused-Respondent

"I have no reason to disbelieve the witnesses about the threats given to Rani Chaudhary and deceased Sikand."

Motive

"Believing the deposition of Ms. Rani Chaudhary, H.D. Sikand and others witnesses, I find that accused had motive to kill not

- A only Rani Chaudhary but also deceased Kishan Sikand so that they don't live together against the wishes of the accused."

Learned counsel submitted that the High Court while accepting the aforesaid findings on the second aspect i.e. Motive, has considered three letters dated 2.10.1980, 16.11.1980 and 3.03.1982 out of context inasmuch

- B as the said letters cannot be read in isolation, particularly in the factual background of the relations and the conduct of the respondent and his behavior with Rani Chaudhary and Kishan Sikand.

11. Learned counsel for the appellants also submitted that the High Court disbelieved the evidence of Mohd. Shafi (PW-7) who saw the accused-Respondent coming out of the house of the deceased and going towards Sunder Nagar market on the reasoning that Mohd. Shafi who had gone to first floor of 98, Sunder Nagar, to give keys ought to have noticed the existence of parcel, which he did not mention. Learned counsel submitted that outsiders normally ignore anything lying on the staircase or other place of house inasmuch as they are not concerned with the same, particularly when a number of persons are living in the same house. Learned counsel submitted that the High Court has also disbelieved the testimony of this witness, firstly, on account of the delay and secondly, that he was the employee of Sikand Motors and that neither Suresh Gopal (PW-3) nor Mohd. Shafi (PW-7) had mentioned each other's presence on the spot in their 161 Cr.P.C. statements recorded by the Police. It was submitted that no question was put as to why Mohd. Shafi did not inform the Police about the visit of the accused to the house of Sikand on 25th September, 1982 or that whether he had noticed the presence of parcel or not.

- F 12. Learned counsel appearing on behalf of Respondent No.2 submitted that the Trial Court has convicted Respondent No.2 for the offence of murder only on the basis of circumstantial evidence and the conviction has been overturned by a Division Bench of the Delhi High Court. It is further submitted that the circumstances relied upon by the prosecution have not been satisfactorily established against Respondent No.2 and the circumstances said to have been established against Respondent No.2 do not provide a complete chain that is required to prove his guilt. The standard of proof required to convict a person in a case of circumstantial evidence, has not been met either. It is submitted by the learned counsel that the law requires that the circumstances relied upon in support of the conviction must be fully established, and that the
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chain of evidence furnished by those circumstances must be so complete, so as not to leave any reasonable doubt for a conclusion, consistent with the innocence of the accused. The circumstances from which the conclusion of guilt is to be drawn, must not only be fully established, but also be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and they must not be capable of being explained by way of any other hypothesis except the guilt of the accused, and when all the said circumstances are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question, which is not the case in the present appeals, the learned counsel submitted.

13. Learned counsel for Respondent No.2 next submitted that the contention of the appellant that the Crime Branch of Delhi Police did not investigate the case properly and with promptitude due to the influence of Lt. Col. Chaudhary (Respondent No.2) whose father was former I.G. in Delhi Police, is an ex facie baseless and unfounded allegation. The father of Respondent No.2 had passed away long back in 1956 and the I.O. Inspector Kochar had not even joined Delhi Police by then and it is a farfetched allegation that he had been influenced by the association of Lt. Col. Chaudhary. In any case, the prosecution has not put any suggestion to Inspector Kochar in his testimony that he wrongly recorded the statement of any witness or that Lt. Col. Chaudhary had influenced him in any manner.

14. Learned counsel for Respondent No.2 further contended that the prosecution's whole case is not based on any concrete evidence or eye-witness testimony but on presumption and imputation of motive to Lt. Col. Chaudhary that he had an animus towards the deceased Kishan Sikand due to his ex-wife Rani Chaudhary living with Kishan Sikand. This cannot be true for the following reasons:

- (a) First, if the reason of anyone's ex-spouse living with/marrying another person led to people killing each other, then it would have already resulted in an unholy mess of biblical proportions.
- (b) Second, all the three protagonists namely Lt. Col. Chaudhary, Rani Chaudhary and Kishan Sikand had experience of previous marriages – the marriage between Lt. Col. Chaudhary and Rani Chaudhary was second marriage for both as he was a divorcee and she was a widow and out of previous wedlock

- A she had two daughters and out of the wedlock with Lt. Col. Chaudhary they had one daughter; and Kishan Sikand was also a divorcee and father to a son. So, divorce and living apart was not a new concept to any of the three parties so as to motivate them to kill someone.
- B (c) Third, due to the differences between husband and wife, Rani Chaudhary left Bangalore where Lt. Col. Chaudhary was posted and came to Delhi and started living separately from 1976 itself, and subsequently she started living with Kishan Sikand at his house. Other than his concern for the future and upbringing of the three young daughters, Lt. Col. Chaudhary
- C was already used to a life without Rani Chaudhary who had been living apart from him since 1976. Therefore, there was no sudden trigger to plan in such detail as alleged and kill Kishan Sikand.
- D (d) Fourth, to suggest that merely because Lt. Col. Chaudhary and Rani Chaudhary went through divorce proceedings and some things were said during that time, he would decide all of a sudden in 1982 to kill Kishan Sikand, is too far-fetched and conjectural, and certainly not on which a conviction under Section 302 can be based.
- E (e) Fifth, letters dated 22.10.80, 16.11.80 and 03.03.82 marked as Ex.PW-1/FF, Ex.PW-1/GG and Ex.PW-1/NN respectively, addressed by Lt. Col. Chaudhary to Rani Chaudhary show that he had reconciled to a life without her but was concerned for the well being and future of the three daughters.
- F 15. It is further submitted by the learned counsel for Respondent No.2 that the testimony of PW-7 Mohd. Shafi is false, manufactured and cannot be relied upon, and that he was a planted witness is clear from the following facts:
- G (a) First, it is most pertinent to point out that if the testimony of the said sole so-called eye-witness in the whole case PW-7 is taken at its face value even then it is nowhere stated that he saw Lt. Col. Chaudhary with any parcel let alone a parcel bomb or that he saw Lt. Col. Chaudhary delivering anything to the deceased's house; he has merely stated that he saw Lt. Col. Chaudhary coming out of the gate of the deceased house on
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25.09.1982. There is neither any eye-witness nor any evidence to show that the so called booby trap parcel was actually delivered, or that it was delivered on this day, or that anybody received the said parcel, or that anybody saw Lt. Col. Chaudhary delivering anything let alone a booby trap parcel to the deceased's residence. A

(b) Second, there was no eye-witness available as long as the Delhi Police investigated the case. However, as soon as the CBI took over the case, two Link Witnesses, magically appear – PW-7 Mohd. Shafi and PW-9 Jug Lal. Even Jug Lal did not support the prosecution story in Court. He was declared hostile. B

(c) Third, PW-7 Mohd. Shafi comes into the picture only on 16.07.1983 – after nine and half months of the incident – when his 161 Cr.P.C. statement was recorded by the CBI. PW-7 coming up with a belated statement casts serious doubts on his truthfulness. C

Learned counsel argued that delay in recording the statements of the eye-witnesses casts a serious doubt about they being eye-witnesses to the occurrence. In support of this submission, he relies upon a recent judgment of this Court in *Shahid Khan v. State of Rajasthan*, (2016) 4 SCC 96, wherein this Court reversed the conviction for murder as statements of eye-witnesses were recorded after 3 days of incident and no explanation regarding the same was given. D

(d) Fourth, in the same judgment i.e. *Shahid Khan v. State of Rajasthan* (supra), this Court further held that evidence of witnesses became unreliable when there was no corroboration of their evidence, and a further reason for reversal of conviction for murder was that there was no information available as to how police came to know that witnesses saw the occurrence and also as the case against accused persons was not proved beyond reasonable doubt. E

(e) Fifth, PW-7 Mohd. Shafi admits that he had never seen Lt. Col. Chaudhary there ever before. It is highly doubtful that he would be particular in noticing that Lt. Col. Chaudhary was coming out of the gate of 98, Sunder Nagar, or that he would be able to say after 10 months that he saw Lt. Col. Chaudhary. F

(f) Sixth, PW-7 is an old and trusted employee of the Sikands with H

A over 30 years of service with them and is, therefore, clearly not an independent and reliable witness and is the only person deposing to have seen Lt. Col. Chaudhary near the main gate coming out of 98, Sunder Ngar on 25.09.1982.

B (g) Seventh, PW-7 has stated that subsequent to spotting of Lt. Col. Chaudhary, he parked the car, locked it and went upstairs to deliver the keys of the car to Kishan Sikand and even at that time he did not see any parcel lying in the staircase. PW-7's testimony itself rules out that Lt. Col. Chaudhary had placed any parcel on that day as alleged by the prosecution.

C (h) Eighth, the claim to recognize a person in the headlights of a moving car, when not specifically looking out for him, would be a very tall and motivated claim, not free from suspicion, especially when sunset occurred at 6.16 p.m. on 25th September, 1982 (recorded data available with Meteorological Bureau) and it gets pitch-dark by 6.45 p.m. Also there was no streetlights outside 98, Sunder Nagar in 1982.

D (i) Ninth, during his cross-examination, except for the exact date and time of seeing Lt. Col. Chaudhary outside 98, Sunder Nagar, PW-7 Mohd. Shafi could not remember any other date in 1982 – neither his son's date of marriage, nor where his son worked, nor his own birthday, nor any important religious or personal occasion.

E The learned counsel, therefore, argued that the entire statement of PW-7 is tailor-made to suit the prosecution story only to create a link between the planting of a parcel and Lt. Col. Chaudhary. Such evidence is to be treated with great suspicion by law and a delay of just a few days, in such circumstances, has been held to be unreliable.

F 16. Learned counsel for Respondent No.2 lastly submitted that the prosecution has failed to prove their case beyond reasonable doubt for the following reasons:

G i) **Motive to Kill:** It is evident from Respondent No.2's letters that he had reconciled to the inevitability of divorce. The High Court has come to the correct finding that while there is scope for an argument that inasmuch as there is evidence wherefrom a motive can be attributed to Respondent No.2; there is an equal scope for an argument that there is evidence on record

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wherefrom said motive gets negated. To conclude, the only admissible evidence which remains against Respondent No.2 is that of motive, which itself is negated from the readings of the said letters. But motive, being presumptive evidence, is a weak evidence and by itself cannot form a chain of circumstances so complete that the only inference possible is the guilt of Respondent No.2, ruling out his innocence.

- ii) **Access to Hand Grenade:** It is submitted that Respondent No.2 was an Army Officer and there is no evidence on record that he respondent would have procured or have access to a POK hand grenades as categorically proved by the testimony of PW-45, DW-3 and DW-6. Also the Respondent was evacuated from the battlefield in a wounded condition after he was relieved of all the arms and ammunition. Moreover, the Respondent belonged to four horse regiment who are not specialized in anatomy of arms and ammunition especially hand grenade. Further, there was no evidence to the effect that any POK hand grenade was stolen at any time. Also it would be preposterous to suggest that the Respondent had stolen a Pakistani grenade during the Indo-Pak in 1971, so that he may use it for personal objective in future and that he actually used it a decade later in 1982.
- iii) **Presence of Respondent at Deceased's house:** The whereabouts of the Respondent on 25.09.1982 is on record from about 1 pm till about 11 pm and at no stage he went anywhere in the vicinity of 98, Sunder Nagar. The Respondent played golf from 1.30 pm till 5.30 pm, then refreshed himself, changed and had refreshments. PW-20 has deposed before the Court in his cross-examination that the Respondent was with him from 7.45 pm on 25.09.1982 till 8.15 pm. It is corroborated by DW-2 Maj. A.K. Nehra that the Respondent arrived at Friends Colony at about 8.15 pm accompanied by short fat person signifying PW-20. Thereafter, DW-2 dropped the Respondent at 4, Friends Colony, where a party was going on. The Respondent's presence is further confirmed till 11 pm by DW-1 Mr. Rattan Sehgal at a party in Friends Colony.
- iv) **Disclosure Statement:** The "voluntary" disclosure statement dated 05.08.1993 was coerced after five days in CBI custody

A and the Respondent has not signed the disclosure statement. The witness to such disclosure statement has also not signed the statement of the Respondent. One of the two independent witnesses has been given up by the prosecution. The Respondent had not pointed to any specific typewriter and the typewriter machine alleged to be used by the Respondent for typing the address was not even sealed on the same day, but much later i.e. on 01.10.1983.

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v) Typewriter used for typing address on the Parcel
PW-75 has led no evidence of any special knowledge gained by him except for a three days stint with Godrej, a company which manufactures typewriters. Further the High Court has in details discussed the criteria for comparison of typewriter evidence, whereby the High Court came to the conclusion that the expert in comparing the two address as alleged typed from the same machine has not followed the reasoning and procedure which an expert necessarily needs to follow as per Fryes test. The seized specimens taken from Janta Commercial were not sealed. Further, PW-75 has admitted that the questioned document does not contain clear impressions due to mutilation and that having admitted thirteen dissimilarities during cross-examination, an attempt was made by PW-75 to explain the said thirteen dissimilarities, and therefore, no reliance can be placed on his report and testimony.

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17. Learned counsel for Respondent No.2 submitted that the rule of evidence setting out the threshold of conviction based on circumstantial evidence emanating from the decision in the English case of R. v. Hodge (168 ER 1163 (1838), and subsequently followed by all the common law countries, is that before a person is convicted entirely on circumstantial evidence, the Court must be satisfied not only that those circumstances are consistent with his having committed the act, but also that the facts are such, so as to be inconsistent with any other rational conclusion other than the one that the accused is the guilty person, is not met by any stretch of imagination in the above-mentioned factual and legal scenario, and therefore, these appeals deserve to be dismissed.

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18. After hearing the learned counsel for the parties and after going through the records of this matter, including the evidence, as analyzed

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by the High Court as well as the Trial Court, it appears that the case in hand is totally dependent upon the circumstantial evidence. We have examined the evidence laid in course of the arguments and have specifically considered the tests which have to be met by the prosecution to get success in the matter as laid down by this Court in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, (1984) 4 SCC 116, wherein the tests have been specifically given and it appears to us after analyzing the facts and evidence in this case, that the prosecution has failed to pass such tests to bring home the guilt of the accused. Accordingly, in our opinion, the High Court has correctly come to the conclusion after analyzing the facts and the evidence. In our opinion, the arguments which have been put forward in the matter by Mr. D.N. Ray, learned counsel appearing on behalf of respondent No.2, are much more acceptable in the facts and circumstances of this case. The findings recorded by the High Court are plausible, logical and persuasive, reached by the materials on record and command for affirmation. Thus, we do not have any hesitation to hold that the High Court has correctly come to the conclusions with the reasons given therefor. Accordingly, we do not find any merit in these appeals which are hereby dismissed.

Devika Gujral

Appeals dismissed.