

CIRCUMSTANTIAL EVIDENCE VIS-À-VIS AARUSHI TALWAR CASE

By Krishna Uday Pareekh²⁷⁸

INTRODUCTION:

The evidence can be classified as direct and circumstantial evidence. In this research paper the researcher will focus on the circumstantial evidence. Circumstantial Evidence is normally a bunch of facts which are unrelated but when such facts are seen together one can draw a conclusion about something which is not known. Thus it establishes the existence or non existence of a fact or a situation. Direct evidence is that which is directly about the real point in issue on the other hand the circumstantial evidence is related to various circumstances which are associated with the real point in issue. In Criminal cases in order to convict the accused solely on the basis of circumstantial Evidence, it should be wholly inconsistent with the innocence of the accused and it must be consistent with his guilt.

In the present research paper the researcher will try to study the case of Aaarushi Talwar which is decided by the Ghaziabad Trial Court. The Hon'ble trial court has convicted the parents of the 14 year old deceased girl solely on the basis of circumstantial evidence. Here the research question are as follows:

- 1) Whether the Hon'ble trial court appraised the circumstantial evidence properly
- 2) Whether the circumstances from which the evidence is drawn are established firmly?
- 3) Whether all the circumstantial evidences taken together form a chain and point towards the guilt of the accused?

CIRCUMSTANTIAL EVIDENCE AS A CONCEPT

CIRCUMSTANTIAL EVIDENCE HISTORICAL BACKGROUND:

It has been observed by Sir James Stephen in "Introduction to Indian Evidence Act, 1872,

²⁷⁸ 4th year BBA LLB Student, Institute of Law Nirma University

“Facts relevant to the issue are facts from the existence of which inferences as to the existence of the facts in issue may be drawn. A fact is relevant to another fact when the existence of the one can be shown to be the cause or one of the causes, or the effect or one of the effects, of the existence of the other, or when the existence of the one, either alone or together with other facts, renders the existence of the other highly probable, or improbable, according to the common course of events.”²⁷⁹

It cannot be traced since how long the circumstantial evidence is used but for the very first time in India Sir James Stephen has addressed circumstantial evidence as the facts relevant to the other fact whose existence can prove the existence of the other fact.

Through years the concept of Circumstantial evidence has evolved through judicial interpretations and the judiciary has played a key role in making the thin line of difference between the direct evidence and circumstantial evidence.

CONCEPT OF CIRCUMSTANTIAL EVIDENCE:

The evidence can be classified as direct and circumstantial evidence. In this research paper the researcher will focus on the circumstantial evidence. Circumstantial Evidence is normally a bunch of facts which are unrelated but when such facts are seen together one can draw a conclusion about something which is not known. Thus it establishes the existence or non existence of a fact or a situation. Direct evidence is that which is directly about the real point in issue on the other hand the circumstantial evidence is related to various circumstances which are associated with the real point in issue. In Criminal cases in order to convict the accused solely on the basis of circumstantial Evidence, it should be wholly inconsistent with the innocence of the accused and it must be consistent with his guilt.

Circumstantial Evidence is also known as indirect evidence. Circumstantial evidence is mainly associated to a series of circumstances or events apart from the main fact which is to be proved. The circumstantial evidence has to be so closely related to the fact in issue that to prove such fact in issue one can infer the same from the existence of the circumstances.

CONDITIONS FOR CONVICTION ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE:

²⁷⁹ Sir James Stephen in Introduction to Indian Evidence Act, 1872

In the case of *Chandmal v. State of Rajasthan*²⁸⁰, the court has held that in situations where the case is entirely based on the circumstantial evidence the three conditions have to be fulfilled:

- 1) The circumstances on which we rely for evidence must be established firmly.
- 2) The circumstances have to be precise and they must point towards the guilt of the person who is accused.
- 3) When all the circumstances taken as a whole they must form a complete chain and there must be no loop hole in the chain. It must indicate that the accused only could have committed the crime and nobody else could have done it.

In the recent case of *Sathya Narayan v. State*²⁸¹ it has been held that in certain cases it is possible where no direct evidence or eye witness is available, in such a situation the court can award conviction solely on the basis of circumstantial evidence if the following five principles are applied:

- “1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances must be or should and not may be established.
- 2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explained on any other hypothesis except that the accused is guilty.
- 3) The circumstances should be of a conclusive nature and tendency
- 4) They should exclude every possible hypothesis except the one to be proved
- 5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion of the accused and must show that inconsistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”²⁸²

AARUSHI TALWAR CASE FACTS

BACKGROUND:

²⁸⁰ AIR 1976 SC 917

²⁸¹ 2013 (80) ACC 138 (SC)

²⁸² Id

The case of Aarushi Talwar is often referred to as the “*Noida Double Murder case*” . In this case, 14 year old Aarushi Talwar was brutally murdered and 45-year old Hemraj Banjade, a domestic help was murdered in the same fashion. Both were killed on the intervening night of 15-16 May, 2008 at Aarushi’s home. The case has received media coverage through and through. It has raised various allegations on the character of the deceased as well as the accused. Moreover the critics have also quoted it as a media trial. The Ghaziabad sessions court has held the parents of Aarushi, who were the prime suspects guilty after the investigation of two CBI teams. The case has been appealed in the Allahabad High Court.

FACTS:

The dead body of a young 14 year old Aarushi Talwar at 6:00 a.m. in L-32 , Jalayu Vihar Flats in sector 25 of Noida, Uttar Pradesh on May, 16. At that point and time in the F.I.R the father, Rajesh Talwar named their missing domestic help, Hemraj as the main suspect. The next day on May, 17 the decomposed body of Hemraj was found on the terrace.

Aarushi Talwar (24 May 1994 – 16 May 2008) was a student a Delhi Public School Noida. She was a daughter of a dentist Couple, Dr. Rajesh Talwar and Dr. Nupur Talwar born out of the IVF (In- Vitro-Fertilization) treatment. She was the only daughter of the dentist couple and they lived in the very flat in which she was found brutally murdered. Hemraj was a live in domestic help and a cook in the Talwar family and he lived in the servant quarters of the flat.

After the discovery of the decomposed dead body of Hemraj the possibility of Him being the suspect in the murder of Aarushi Talwar was ruled out and the prime suspects were now Aarushi’s parents. The police has developed two theories for the motive of Dr. Rajesh Talwar to murder Ssrushi and Hemraj:

- 1) Rajesh Talwar murdered the two in a fit of rage seeing the deceased in a compromising position on the fateful night.

OR

- 2) Hemraj blackmailing Rajesh about his alleged extra marital affair with Anita Daurani with whom they shared the Noida Dental clinic and Hemraj confronting the same to Aarushi.

The case was transferred to CBI. The CBI team suspected the Talwar’s assistants Krishna Along with the two other domestic servants- Rajkumar and Vijay. The CBI conducted a narco analysis on the three suspects. The three suspects have in the narco analysis confessed about

their involvement in the narco analysis and it is presumed that they killed Aarushi after attempting to sexually assault her and since Hemraj had witnessed the same they killed Hemraj too. But all the three men were released as no evidence was found against them. Moreover at the same time the Talwar couple came clear in the narco analysis and nothing was found against them and they were not involved in the crime scene. As per the Section 45 the results of the narco analysis test is not binding on the court.

In 2009, September the case was transferred to a new CBI team which was headed by SP Neelabh Kishore and the investigating officer was Additional SP AGL Kaul. The Second CBI team suspected the Talwar couple but due to insufficient evidence it has suggested the closure of the case and has submitted a closure report stating that the servants Krishna, Rajkumar and Vijay have a clean chit and they are not involved in crime as during the narco tests they said is not reliable and moreover they have a valid alibi. Moreover there is no evidence that they were at the Talwar residence at the time of the incident. They have also stated that the possibility of any outsider committing the murders is ruled out as there are no signs of forceful entry and there is no other evidence suggesting the presence of any outsider. Thus with all the possibilities ruled out all the evidence is pointing towards the Talwar couple. The CBI suspects the Talwar couple on the *basis of circumstantial evidence* but due to lack of evidence they submitted a closure report on December 29, 2010. In January 2011 the Talwars filed a petition against the CBI in Ghaziabad Court in an attempt to close the case. In February 2011, the Hon'ble Ghaziabad sessions court converted the Closure report of the CBI into a charge-sheet and the Talwar couple was summoned in the court and thus a case was filed in the court against the parents of the deceased on the basis of the closure report of the CBI.

TIMELINE OF EVENTS BEFORE THE MURDER

MAY 15, 2008 BEFORE 9:00 P.M:

In the time span of 9:00 a. m to 1:00 p. m Nupur Talwar was working at the Hauz Khas clinic and then after picking Aarushi from her school at 1:30 they returned to their residence for lunch. They were joined by Rajesh's brother, Dinesh's wife for the same. Both the ladies left the house after the lunch and Aarushi was left alone in the house. In the time span of 4:30 p. m to 7:00 p. m Nupur saw patients at Fortis Hospital and she was back home around 7:30 p. m in the evening.

Dr. Rajesh Talwar as a part of the routine from 8:45 a. m to 3:30 p. m in the noon took classes at the ITS Dental college and then saw the patients at the Hauz Khas clinic till 8:30 P.M

MAY 15, 2008 9:00 P.M to 10:00 P.M:

Rajesh returned home from the Hauz khas clinic around 9:30 p. m. At around 9:30 Umesh, driver or Rajesh Talwar had come to the house to hand over the car keys. He handed over Rajesh's car keys and his bag to Hemraj. It is evident from the circumstances and evidence that Umesh was the last outsider to see both the deceased alive. Thus the theory of last seen together has been applied. Umesh saw that Hemraj had cooked the food for the family and Nupur and Aarushi were sitting at the dining table waiting for Rajesh Talwar to join whereas he saw Rajesh Talwar at the door of the bedroom.

MAY 15, 2008 10:00 P.M to 11:00 P.M:

After the dinner all the members of the family headed towards Aarushi's room. There the couple gifted Aarushi a Sony DSC-W130 digital camera, which was Aarushi's birthday gift which Rajesh had actually planned to give her on her birthday on 24th May. The camera was couriered to the house in the earlier part of the day and was received by Hemraj. Aarushi clicked pictures with her parents and the last picture was clicked at 10:10 p. m. Later Aarushi's parents headed towards their room while Aarushi stayed back in her room.

MAY 15, 2008 11:00 P.M to 12:00 P.M:

As per the story of the accused at 11:00 p. m Dr. Rajesh Talwar told his wife, Dr. Nupur Talwar to switch on the internet router in Aarushi's room. When Nupur entered Aarushi's room to put on the switch of internet router she saw Aarushi reading "the three mistakes of my Life" authored by Chetan Bhagat. After doing so Nupur went back to her room.

Meanwhile Dr. Rajesh Talwar answered a call from U.S and then he used the internet and he had sent an email at 11:41. This was the last time when the internet was used from the desktop or the laptop.

MAY 16, 2008 AFTER 12:00 P.M (MIDNIGHT):

At the stroke of 12:00 it has been observed from the telephone records that one of Aarushi's friends tried calling on her Cell phone but the same was unanswered hence he called on the landline number, the same was unanswered hence he sent a SMS on Aarushi's phone but the same was not received on her phone. It is detected from the the data that the internet was last

used at 12:08 a. m and from this the CBI has drawn a conclusion that the Talwars were awake till 12:08 a. m

As per the post mortem reports both have been murdered between 12:00 a. m to 1:00 a. m but the exact sequence of the events are not available with the CBI in the time span of 12:00 a. m to 6:00 p.m.

SUSPECTS AND EVIDENCES

HEMRAJ AS A SUSPECT:

In the morning on 16th May when Aarushi's dead body was found at the Talwar residence in her room. Firstly the parents saw her dead and then when the maid came in the house she also saw the dead body of Aarushi was lying on the bed and it was covered with a flannel blanket.

Here the parents as well as the police suspected the live in servant, Hemraj as the prime suspect in the murder as he was not present at the crime scene. Rajesh Talwar suspected Hemraj for Aarushi's murder. Moreover he was telling the police several times to catch hold of Hemraj and to waste their time at the Talwar residence as Hemraj flee away from the crime scene after committing a murder. He asked them to go to the native village of Hemraj in Nepal and he offered them Rs. 25000 for the same.

The Police also initially suspected Hemraj for the murder and made a presumption that Hemraj might have drank the scotch whiskey from the bottle which was lying on the table. Then in that drunk state of mind he might have gone to Aarushi's room and tried to sexually assault her. She might have resisted it and hence he killed her and slit her throat. The police at the early stage suspected a nepali knife, Khukhri as the murder weapon.

On finding the dead body of Hemraj on the terrace on 17th May when the terrace door was broken open the suspicion of the police on Hemraj was negated and moreover it was also a shameful part on the side of the police as they had failed to investigate the crime scene.

EARLIER SERVANTS AS A SUSPECT:

On finding Hemraj's body lying on the terrace the police suspected the Talwar's previous live-in domestic help, Vishnu. Vishnu had been with the Talwar family since the last 10 years and

each time he would go for a vacation to his village he would put any of his distant relative in his place to work for the Talwar's. The last time he had been to village was 8 months prior to the murder and at that time he had replaced himself with Hemraj. But when he returned, to his despair he was removed from his job and the Talwars had preferred Hemraj over him. Thus the police came up with a new theory that losing his job to Hemraj might have enraged Vishnu thus he killed Hemraj and Aarushi might have witnessed the same hence he killed her too. But this theory also flawed since he had a strong alibi.

KRISHNA, RAJKUMAR AND VIJAY AS THE SUSPECTS:

These three are the other servants of the Talwars and they were put to job at Talwars by Vishnu. All of the workers were of Nepali origin. They were Hemraj's friends. The narco analysis of all the three of them reveals that they were involved in the twin murder. On the basis of Narco analysis the CBI recovered a blood stained khukhri and a pant. All the three in the narco analysis have confessed to the crime and have discussed the chain of events but there is a clash in the sequence of events narrated by them.

Krishna opted for a plea of alibi. It was testified by the family members of Krishna as well as his landlord that Krishna was at the home when the murders took place. Puneesh Tandon, who is the neighbour as well as the employer of Vijay Mandal has testified in court that at the time of the murders Vijay Mandal was present at their garage. Rajkumar was employed with the Daurrani's and the Daurrani's have testified that He was at the Daurrani's residence till 12:30 and then everybody in the house had slept. Moreover the watchman of the Jalvayu Vihar has testified that he did not see anybody roaming in a suspicious condition. Neither has he seen anybody enter or leave the flats.

They have said in their defense that the narco analysis is not admissible as evidence. Moreover no DNA of any of them has been found of either of them at the Talwar residence. The investigation team was not able to abstract DNA from the blood on the khukhri. Thus, finding no strong evidence against them the 3 of them they were released.

PARENTS AS THE SUSPECTS:

There is no direct evidence and on the basis of circumstantial evidence the CBI suspected the parents:

- How is possible that the parents were sleeping all the night and could not hear anything going on in the house? Or how is it even possible that they did not hear Aarushi scream.

- The door of Aarushi's room was such that it could be opened from inside and to open the same from outside one had to use the keys. The keys of the room remained with Nupur then who else could have opened the door apart from the parents.
- The another probability is seeing Aarushi and Hemraj in a compromising position Rajesh killed the two in a fit of rage. Thus, there is possibility of honour killing.
- They cremated Aarushi's body in hastw. Thus, there was undue haste in cremation.
- Aarushi's father tried to mislead the investigation as he asked the police to search for Hemraj and also offered to pay for their travel to his native town in Nepal. Later when he was asked for the keys of the terrace he denied that he did not know where the keys were and lastly when Hemraj's body was found he has said that he won't be able to say whether it was Hemraj's body.
- The extra marital affair of Rajesh was in knowledge of the servant as well as Hemraj and hence he was blackmailed.
- Tempering with the samples of Aarushi.
- The golf club which was suspected as the murder weapon appeared as if it had been cleaned and it appeared to be different from the other golf clubs.

JUDGMENT AND CRITICAL ANALYSIS

JUDGMENT:

The Court has quoted the Judgment of *Khem Karan v. State of U.P.*²⁸³ If all the circumstances and the evidence on those basis point towards the guilt of the accused and there is no possibility of any other alternative hypothesis then in such a situation only the accused can be convicted solely on the basis of circumstantial evidence. In the current case the current case the court has relied on the following circumstances as they unerringly point towards the guilt of the accused:

- 1) As per the last seen theory both the deceased were last seen by the driver, Umesh at the Talwar residence at 9:30. As per the last seen theory the time gap between the murder and the last seen should be such as to rule out the possibility of somebody else committing the crime. Moreover the burden of proof shifts on the accused to prove the facts after the last seen.

²⁸³ AIR 1974 SC 1567 (3JJ)

- 2) In the morning on 16-05-2008 at 6:00 a.m Aarushi was found murdered in her bed room. Her room and her parent's room were adjacent to each other and they were separated by a wooden wall.
- 3) The suspect, Domestic help Hemraj's dead body was found on the terrace of the flat in the pool of blood on 17-05-2008 which was locked from inside.
- 4) It has been admitted by both the accused that the door of Aarushi's room was such that it can be shut from inside then it can be either opened from inside or with the help of the keys from outside. In such a situation the accused have failed to offer explanations as to how be the door opened or who opened the door.
- 5) The data shows that the internet router was active the entire night from which it can be concluded that at least one of the accused was awake at that night.
- 6) No evidence suggests that any outsider had come to the Talwar residence after the driver Umesh at 9:30 p. m
- 7) The Electricity board reports suggest that there was no power cut on the intervening night.
- 8) As per the observation of the guards there was no one seen moving near the gates of the flats in an suspicious manner on that night.
- 9) There is no evidence suggesting any forcible entry of outsider in the intervening night.
- 10) On the early morning of 16th May, 2008 when the maid came to the Talwar residence for brooming purpose Nupur Talwar told her that Hemraj might have locked the door from outside and have gone to fetch milk and she asked her to go downstairs so that she would throw the keys to her. But actually the door was not latched or locked from outside.
- 11) The House maid has nowhere stated in her statement that the parents were weeping on seeing Aarushi dead. Thus, the court has inferred that how it even possible is that being parents of the only young child seeing her murdered did not even weep.
- 12) The court has drawn an inference from the statement of the maid that what Nupur Talwar told her was a made up story or it was preplanned and it lacked spontaneity as per the Section 8 of the Evidence Act.
- 13) The Court has presumed that in a general situation the parents would have hugged their murdered daughter and in that process their clothes would be stained with blood. But in the given circumstances there were no blood stains of the deceased found on the clothes of the parents.

- 14) No outsider would even dare to take Hemraj to the terrace after killing him and then lock the door from inside. In case if the murderer is outsider then he would be in a hurry to escape. Moreover it is not possible for a single person to take the body to the terrace.
- 15) No outsider would even dare to to drink scotch whisky after committing the two murders knowing that the room of the parents of the deceased was just adjacent to the room of the deceased and they might wake up at any moment. The top priority of the murder would be to flee away from the crime scene without being noticed.
- 16) It is observed that the door of the terrace has never been locked from inside on the previous occasions only on the morning of 16-05-2008 it was found locked and when during the investigation the police asked the accused for the keys of the door the accused failed to hand over the keys to the police
- 17) It is the plea of the accused that 8-10 days prior to the occurrence the painting was started and since then Hemraj had started locking the door of the terrace and hence he used to keep the keys of the terrace. In such a situation it is not possible for any outsider to get hold of the keys.
- 18) In case if the murder is committed by the outsider than he might have escaped after locking the door from outside.
- 19) The motive has been established.
- 20) The rooms were completely dressed up after the murders and everything was in proper place. Thus, the court has inferred that it is not possible for any outsider to keep things in place. This can be done by a person who is very well acquainted with the house.
- 21) The Golf club no. 5 which is alleged murder weapon was hidden and the same was produced after several months.
- 22) From the injuries on both the dead bodies it can be inferred that the murder weapon are a golf club and a scalpel. It is obvious that the golf club was used by Dr. Rajesh Talwar as he was a member of Golf Club, Noida and moreover the scalpel also would be handy as both of them are dentists.

On the basis of the circumstantial evidence the court has convicted Dr. Rajesh Talwar and Dr. Nupur Talwar U/S 302 r/w Section 34 and section 201 r/w section 34. It has been inferred that the Couple not only committed the heinous crime of murdering their daughter and the domestic help but also destroyed the evidence. The Couple had the exclusive opportunity to commit the offence and had enough time at night to destroy the evidence.

Additionally the court has also held that they mislead the investigating teams. Thus they were convicted and punished with rigorous imprisonment for life.

CRITICAL ANALYSIS:

The researcher is firmly of the view that somewhere the court has failed to appreciate the evidences in a proper fashion and moreover the circumstantial evidences also have not been established firmly. In case if the conviction is to be based solely on the basis of circumstantial evidence then each of the evidence which is relied upon must be firmly established and all these circumstances when taken cumulatively must form a complete chain of events which suggests that the only possibility is that the accused are the ones who have committed the crime. In the case of *Ramdas v. The state of Maharashtra*²⁸⁴ it has been held that in a case when there are two possible inferences the court must accept that inference which is in favour of the accused. Moreover it is also interpreted that in case if the conditions laid down in the case of *Sathya Narayan v. State*²⁸⁵ for the conviction on the basis of circumstantial evidence are not fulfilled then in a criminal case the accused is entitled to get benefit of doubt. Moreover the court is of the opinion that the parents, the accused had the exclusive opportunity to commit the crime, and hence they have committed the murders but in the case of *Taantje*²⁸⁶ the maid was held guilty of theft as she had the exclusive opportunity to commit theft in the house she underwent the punishment and later it was proved that the butcher had hidden in the house and he had committed the theft. Hence there is an absolute possibility that though on the face of it, it appears that the accused had the exclusive opportunity but there are all probabilities there can be an outsider. The researcher differs from the point of view of the court and has an explanation to every point or every circumstantial evidence on which the court has relied.

- 1) In the very first finding of the court there is an error. The researcher observes that on the fateful night taking into account the circumstances there were 7 people in the house and not 4 people. As per the reports of the CBI the imprints of 3 people have been seen on the bed of Hemraj which clearly suggests the presence of three other persons in the house. Moreover there was sufficient time gap hence the condition of time gap in the last seen theory cannot be adopted as, as per the post mortem report the murder is committed at 1:00 a. m hence after the driver(outsider) had last seen the deceased alive at 9:30 p. m there was enough time for an outsider till 1:00 a. m to kill the two victims.

²⁸⁴ AIR 1977 SC 1164

²⁸⁵ *Supra* 3

²⁸⁶ Cited in Batuklal's Law of Evidence

- 2) The wall which separated the rooms of the accused and the deceased Aarushi was made up of brick and was laminated with a wooden laminate. The CBI has conducted the sound test and they have indicated in their report that it is next to impossible with both the air conditioners working in both the rooms to hear any kind of sound in the room of the accused.
- 3) It has been stated that the door of the terrace had been locked from inside but this not even making sense as the stairs lead down to the floor where Talwars resided and subsequently they lead to the ground floor. Thus, the stairs were outside the house. Thus, there was no other way to lock the terrace and any other killer also would have done the same and lock it in similar fashion.
- 4) The CBI report has also clearly stated that at 11:00 p.m Nupur Talwar had gone to Aarushi's room to switch on the internet router in her room and in that process while opening the door of Aarushi's room she had left the keys to the door on the keyhole itself. Thus it became possible for the outsider to open the door. Moreover the lie detector test conducted on the accused has showed no evidence of their involvement. Though the court is not bound by the results of the narco analysis but it can be corroborative evidence.
- 5) The court has inferred that atleast one of the accused was awake on the fateful night as the internet usage is seen. But the contrary has been testified by the telecom witness. The records show the similar pattern of activity on the fateful night to that of 16th may from 6 a.m to 1:00 p. m. Moreover the Telecom witness has clearly stated in his cross-examination that is not aware whether the data would transfer between modem and ISP if they are on and the computer and laptop are switched off. Thus, here it is very clear that the CBI has lacked in investigation as it is possible to get the data from the internet service provider which sites were surfed if the internet was on, this would have been evidence. Thus, the CBI has lacked and the internet cannot be used as evidence.
- 6) The court has inferred that there is no evidence to show the presence of any outsider other than the four people present. But there are evidences which prove the contrary that on the intervening night there were more than 4 people:
 - a) During the investigation the police had seized the bottle of wine, bottles of beer and a bottle of a cold-drink from the room of Hemraj.
 - b) As per the investigation reports there are imprints of three people on the bed of Hemraj and moreover the bathroom of Hemraj suggests that there were outsiders since it suggests that there were multiple users.

- c) In the Narco-Analysis the three suspects Krishna, Rajkumar and vijay Mandal have confessed their involvement in the murders and that on that fateful night they had gathered in the room of Hemraj in Talwar residence. They have also confessed that on that night they had gathered and heard songs on nepali channel one. The CBI team confirmed the same with Nalini Singh, senior journalist of Nepali channel one. She has confirmed that those songs which had been described by the suspects in the narco- analysis had been played on her channel but the court did not allow her to appear as a witness in the case.
- 7) The point considered by the court that there was no electricity cut off is not even relevant in the given circumstances and they do not even form a part of the chain of the circumstantial evidence since it fails to point towards the guilt of the accused.
- 8) The inference that no one was seen near the flat in a suspicious circumstance during the intervening night is also not acceptable:
- a) This has been testified by the watchman that no one seen out of the flat roaming about in suspicious circumstances, but coming to the practical aspect it is not possible that the watchman might have been up the whole night.
- b) It cannot be said that nobody was seen outside the flat but the same can be said that nobody had seen the accused dragging the dead body of Hemraj to the terrace moreover no one has seen them disposing the blood stained bed-sheets, clothes and murder weapons in the wee hours of the morning as has been alleged.
- c) Lastly the earlier suspects, the three servants who were the outsiders to come to the talwar residence that night lived in a complex which was just a few yards away. Thus, though they have the plea of alibi they had enough opportunity to commit the murders at talwa residence and then flee off to the place where they lived. Thus the reasoning of the court has flawed here.
- 9) The court is of the point of view that there can be no outsider as there is no evidence of forcible entry. Here the court has failed to discuss the point of friendly entry. Here there was no question of forcible entry as the suspects of the earlier CBI team were the friends of Hemraj and the telephonic records suggest that Hemraj had been contact with Krishna in the evening on 15 th May, 2008.
- 10) The evidence of Bharti Mandal, the maid has also not been appretiated in a proper manner she has said in her statement that initially she tried to unlock the first grill door by pushing it. In the process of pushing it the first grill door was unlocked and got

unlatched. The second grill door was indeed latched from outside which she unlatched it using the keys which Nupur had given her and she entered.

- 11) The court is inferring that the Parents of the single child would ideally cry seeing her dead but there is a possibility that they might be in deep shock. Earlier in the case of *Palvinder Kaur v. State of Punjab*²⁸⁷ the Supreme Court has held that a wife disposing the dead body of her husband who died after consuming potassium cyanide cannot be considered as destroying of evidence. The court laid down that different person would react differently to the situation. So here also there is a situation which is very unnatural for parents to see their only daughter murdered and hence they can be too shocked to weep. Moreover the maid has said in her statement maid as well as the other visitors has testified to the court that the parents were weeping.
- 12) The court has stated that what Nupur told the maid seemed planned and it was not spontaneous but as per the habit as the Talwars were late risers Hemraj would open the door but that day when the maid rang the bell once nobody opened and meanwhile Nupur was waiting for Hemraj to open the door so on hearing the door bell ring second time she went up to open the door and as she did not see Hemraj in the house so she had said that he might have gone to fetch some milk. At that point and time she wasn't aware regarding the murder of Aarushi so there was no possibility of her making up stories.
- 13) Firstly the clothes of the accused had been seized a month later on the date of 16th June, 2008 so there was a high probability that by the time they were seized they might have been washed and dried and ironed. Here the CBI or the investigation has lacked as they should have seized the clothes on that very day. As a matter of fact after the seizure of the clothes they were tested and only Aarushi's blood was found on them. Thus, this itself proves that they had hugged Aarushi seeing her lie on the bed murdered. The same also eliminates the possibility that they are the accused in the case as their clothes do not have blood of Hemraj.
- 14) The evidence nowhere suggest that Hemraj was killed in the room of Aarushi nor does it suggest that he was dragged to the terrace after death. The postmortem report of Hemraj clearly says that his footwear was found along with his dead body on the terrace. This itself suggests that he had walked up to the terrace. Moreover these outsiders were not complete strangers they were familiar with the Talwar residence as they were

²⁸⁷ AIR 1952 SC 354

Hemraj's friends and as far as the question lies that how they got the keys it was easy for them to get the keys as they were kept with Hemraj.

- 15) The Court is of the view that the Ballentine scotch whiskey was found on the dining table and that no outsider would have the courage to have a sip of it after committing the murders. The samples of the neck and the mouth of the bottle had been taken for DNA test as if Rajesh had consumed the Whiskey there would have been his fingerprints or saliva from which DNA could be detected. But the test detected negative and neither did he smell of alcohol the next morning.
- 16) It is not clear from the evidence that Hemraj has been killed in Aarushi's room hence there is only a probability of dragging Hemraj to the terrace.
- 17) The Police investigation has failed in investigating the crime scene. It has been proved that one set of keys of the house and the terrace remained with Hemraj and hence Rajesh Talwar as not aware regarding the same. At the same time the police was not stopped by the accused from breaking the door open. It was only on the next day 17th May 2008 the police broke down the door. Thus, this can be heavily criticized as the police had failed to investigate the entire crime scene.
- 18) This very finding of the court itself would prove that the outsiders were Hemraj's friends and hence they were familiar with the Talwar residence. Moreover Hemraj had a bunch of keys which included a key to the terrace which means that he had an access to the terrace. The outsiders lived just a few yards away hence they could have committed the crime and easily flee away.
- 19) The motive of the crime has been established on the basis of the Crime scene Reconstruction. The report has been prepared by Dr. Dahiya on the basis of his findings. The CBI drew an inference as per the report of Dr. Dahiya that blood of Hemraj was found on the pillow of Aarushi so the father killed both of them as he saw them in a compromising position. But the same can be safely ruled out as the forensic scientist, B.K.Mahapatra has testified that no blood of hemraj was found in Aarushi's room.
- 20) It is inferred by the court that the crime scene was dressed up and everything in Aarushi's room was in place. The researcher would like to draw the attention that servants are best at cleaning the house and they are the best. They are better at this job even as compared to the master. Here the possibility of outsider committing the murders points out at the servants hence this point also must be considered.
Moreover it can be said that the investigation agency is dressing up the entire crime scene as the post mortem doctor who earlier had found no abnormalities in Aarushi's

private parts suddenly after 18 months of preparing the report remembers that there had been abnormalities in Aarushi's private parts.

21) The CBI reports suggest that the golf club is the murder weapon. But the CBI has again lacked here in the investigation. They had failed to seize the golf kit for months and months later it was asked for by the CBI to the Talwars to hand over the golf kit. The same was done by the Talwars on the next day. No DNA was found on the Golf club. Had the Talwar been aware that the golf club is the murder weapon then they would have tried to destroy the golf club but on the contrary they handed over the kit to CBI even after months when they were asked.

22) The Reports clearly suggests that the cuts on the throats of both the deceased could not be done with a scalpel. The accused have also proved the same. It was proved that a dental scalpel was too small to inflict deep cuts. It clearly suggested that a khukri was used to inflict injuries on the neck of the deceased. From the injuries it was clear that the injuries could have been caused by a weapon having heavy blunt side and a sharp knife like side, this suggests that khukri was used. Pertaining to this during the CBI investigation a blood stained khukhri was recovered from Krishna's room but the same was never sent for investigation.

CONCLUSION AND SUGGESTIONS

CONCLUSION:

In the above situation it can be concluded that the court has passed a judgment on the basis of the circumstantial evidence but has failed to appreciate the evidence. To convict on the basis of circumstantial evidence the court must appreciate all the evidences of the circumstances which point towards the guilt of the accused. All the evidences have to point towards the guilt of the accused. Here it is not the case. The reports of the two CBI teams have suspect completely different set of people. The first CBI team suspects the Servants as the prime suspects as they have admitted their presence in the occurrence during the narco analysis and the same has been proved with the help of song aired on the news channel but that witness had not been admitted. At the same time when the case got transferred to the new CBI team they suspected the parents and drew a complete different hypothesis that Rajesh killed Aarushi and Hemraj seeing them in a compromising position and the exact role of the couple in the murder cannot be determined but it is presumed that Dr.Rajesh killed the two and his wife, Dr. Nupur

Talwar helped him destroy the evidences. Thus the reports clearly suggest that there are two possibilities and in such a situation when the conviction is based on circumstantial evidence the situation which favours the accused has to be accepted by the court and the accused must be given the benefit of doubt. But here the court has failed to follow this and has convicted the Talwar couple on the basis of circumstantial evidence without even establishing the same properly. Thus, no benefit of doubt has been given to the accused, Talwar couple.

SUGGESTION:

Here in the given situation going through the entire case, the reports of the investigation branch one can safely say that the investigation team has lacked in seeing to it that the crime scene has been examined thoroughly. The Investigating officer has lacked in collecting proper details regarding the internet usage from the router. Moreover they have failed to investigate the crime scene. On the very first day they had missed out on investigating the terrace. Had it been done earlier the dead body of Hemraj would have been found. They failed to seize the clothes that the Talwar couple had worn at that very moment rather those clothes were seized after a month. The alleged murder weapon, the golf club was also seized long after the occurrence. Moreover in the morning of 16th May 2008 the investigating officer and the police failed to freeze the sight rather many outsiders, intruders and media persons were allowed to enter the house. This could have lead to tampering of evidence and which is a milestone to future investigation. The CBI has ignored many other evidences like the handprint with blood on the wall of the terrace or the blood stained khukhri found at Krishna's place. Moreover the views of the CBI team were conflicting and hence it cannot be clear that investigation of which team of CBI should be relied upon.

Poor investigation and poor functioning of the police is all the more letting down the faith of the citizens in the investigating agencies as well as the police. Moreover in this case it is evident that to put a blanket on the failure of the police and investigating agency to solve the case the court has held the easy suspects as the accused. This only reduces the trust of the citizens in the Indian Judiciary. Here the parents have lost their daughter and they have become victim to the falter of the poor investigating agencies, police and judiciary. Thus, High Court in the appeal must consider all the facts and must see to it that even if it is convicting any of the suspects on the basis of the circumstantial evidence then the evidences must be firmly established and all of them must point towards the guilt of the accused and the evidences must

cumulatively form a chain which will be inconsistent with the innocence of the accused and consistent with the guilt of the accused. Thus it must be completely pointing towards the guilt of the accused. In case where there is a probability of drawing two inferences then the one which favours the accused must be adopted by the court and must give the accused the benefit of doubt.

