Kamlesh Kumar vs State Of U.P. on 3 March, 2025

Author: Rajan Roy

Bench: Rajan Roy

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

High Court of Judicature at Allahabad

(Lucknow)

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Court No. - 2

Case :- CRIMINAL APPEAL No. - 396 of 2019

Appellant :- Kamlesh Kumar

Respondent :- State of U.P.

Counsel for Appellant :- Ramendra Kumar,Kapil Misra,Pawan Kumar Gautam,Pintoo,Ramesh Bab

Counsel for Respondent :- Govt. Advocate

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per: Rajan Roy, J.) (1) Heard Sri Shivam Gupta, learned counsel for the appellant, Ms. Meera Tripathi, learned A.G.A. for the State-respondents.

(2) This is an appeal against the judgment and order dated 30.11.2018 passed by Special Judge (Anti-Corruption Act) Court No.3, Lucknow in S.T. No.636 of 2015 (State vs. Kamlesh Kumar) arising out of Case Crime No.101/2015 convicting the appellant-Kamlesh Kumar for the offence of murder of his wife and sentencing him to life imprisonment under Section 302 I.P.C. with fine of Rupees Ten Thousand.

(3) The prosecution case in nutshell is that on 28.03.2015 at about 04:00 A.M. one Ram Kesan father of the accused/appellant submitted a tehrir at P.S.-Mall, District-Lucknow to the effect that in the night of 27/28.03.2015 when he was sleeping with his wife at their old house and, his son-accused along his wife was in the new house, at around 12:30 in the night, his son (accused) came in a nervous state and informed him that about half an hour ago, a person had entered the house by the stairs which was inside the house and opened the door letting in three other persons who had their faces covered and these persons overpowered him and administered a tablet with water as a result of which he lost consciousness. When his daughter aged about one and half year started crying, he regained consciousness and saw that his wife was lying dead by his side. She had sharp/ incise injuries on her neck and her body. The informant-father went to the place of incident with his son and saw his daughter-in-law Rajpati lying on the cot covered in blood. He informed the police by dialing 100. It is then that the police came.

(4) On receipt of information, an F.I.R. (Ex.Ka.2) was lodged at 04:20 A.M., the same day i.e. 28.03.2015 under Sections-328, 302 I.P.C. and investigation was conducted by P.W.4-Sanjay Kumar. Inquest report is Ex.Ka.11. Post-mortem was conducted at 12:10 P.M. on 28.03.2015. Post-mortem report is Ex.Ka.16, according to which, there were about six ante-mortem injuries mostly incise wounds and one stab wound. The cause of death as per the post-mortem report was shock and hemorrhage due to ante-mortem injuries and stab wounds. Ex.Ka.4A is memo of recovery of plain and blood stained soil collected from the scene of crime which bears signature/ thumb impression of P.W.1 and P.W.2. Ex.Ka.5 is the memo of recovery of slippers of the deceased and the accused and bears signature/ thumb impression of P.W.1 and P.W.2. Ex.Ka.6 is the memo of recovery of 'puke' from the scene of crime which also bears signature/ thumb impression of the same witnesses. Ex.Ka.8 is the memo of recovery of the weapon used in commission of the crime by the accused i.e. a knife. Siteplan pertaining to the scene of crime is Ex.Ka.7 whereas the siteplan for the scene of recovery of weapon used in commission of the crime is Ex.Ka.10.

(5) Chargesheet under Section 302 I.P.C. Case Crime No.101 of 2015 was filed against the accused by the Investigating Officer of P.S.-Mall, District-Lucknow. As the case was triable exclusively by sessions court, therefore, it was committed to it on 01.07.2015 and the sessions court framed the charge against the accused-appellant on 10.11.2015 for the offence of murder punishable under Section 302 I.P.C. The accused denied the charges, therefore, he was put to trial.

(6) The trial court on a consideration of evidence before it and its appreciation, convicted the appellant for the offence as already mentioned hereinabove. Hence, this appeal.

(7) The contention of learned counsel for the appellant in nutshell was that the prosecution has failed to prove the chain of events and circumstances to prove the guilt of the accused as per law, especially his presence at the time of commission of the crime. Therefore, burden did not shift upon the appellant so as to offer an explanation under Section 106 of the Indian Evidence Act, 1872 (hereinafter referred to as the Act, 1872). The recording of statement under Section 313 Cr.P.C. itself was improper and not in accordance with law. Statement of the accused recorded under Section 313 Cr.P.C. is not an evidence which could be made the basis for convicting him. Adverse material was not put to the accused and, merely, a formality of recording such statement was conducted by the trial court. There is no evidence regarding relationship between the accused and his wife being strained nor about any motive for committing the said crime. Both the witnesses of fact have not supported the prosecution case. The recovery of weapon allegedly used in commission of the crime is not in terms of Section 27 of the Act, 1872. There are no independent witnesses and even otherwise, the ingredients of law have not been satisfied. Even if the case of the prosecution is accepted, there is still no evidence to bely the explanation offered by none other than P.W.1 as to how the crime was committed which was not by the accused. If there are two views possible then the benefit should go to the accused. The recovery of item is itself suspect and manipulated. Consequently, the report of forensic lab is also of no significance. Even otherwise, it does not say that human blood found on some of the items was of the deceased. The requirements of law for basing a conviction on circumstantial evidence is not satisfied. He has relied upon judgments rendered in the case of 'Nagendra Sah vs. State of Bihar' AIROnline 2021 SC 710; 'Parubai vs. the State of Maharastra' AIR Online SC 3784; 'Satye Singh & Anr. vs. State of Uttarakhand' AIR Online 2022 483; 'Manharan Rajwade vs. State of Chattisgarh' 2024 SCC Online SCC 1836; 'Dinesh Kumar vs. the State of Haryana' AIR 2023 SC (Criminal) 984; 'Guddu vs. State of U.P.' Criminal Appeal No.2207 of 2016 dated 29.05.2022; 'Raj Kishore @ Pappu vs. State of U.P.' Criminal Appeal No.1443 of 2008 dated 18.07.2022; 'Suresh Ladak Bhagat vs. the State of Maharastra' 2022 SCC Online Bom 1266; 'Bablu Tirkey vs. the State of Jharkhand' AIR Online 2024 JHA 386; 'Raj Kumar vs. State (NCT of Delhi)' AIR 2023 SC (Criminal) 1115; 'Jai Prakash Tiwari vs. State of Madhya Pradesh' AIROnline 2022 SC 1222; 'Shivaji Chintappa Patil vs. the State of Maharastra' AIR 2021 SC (Criminal) 813; 'Indrakunwar vs. the State of Chattisgarh' AIROnline 2023 SC 839 and 'Naresh Kumar vs. the State of Delhi' 2024 SCC Online SC 1641 in support of his contention.

(8) Per contra, learned A.G.A. submitted that medical evidence clearly establishes that the deceased was murdered. She was wife of the accused. The incident took place in the night, in the house of the accused. P.W.1-the father of the accused has established presence of the accused in the house in the night, at the time of commission of the crime. In view of this, the prosecution succeeded in proving the chain of events leading to the opinion that it is the accused alone who could have committed the crime. Therefore, the burden shifted upon the accused but he did not offer any explanation as envisaged under Section 106 of the Act, 1872 as such the trial court was right in drawing a conclusion that it is the accused who had committed the crime and prosecution is successful in proving the guilt of the accused beyond reasonable doubt. Merely because, no evidence was led to prove the motive by itself is not sufficient to acquit the accused even in a case of circumstantial evidence as his presence at the time of commission of the crime in the house in the night was proved by none else than the father of the accused who appeared in the witness box as P.W.1. The recoveries were also proved as they were prepared by a police officer who has deposed as P.W.4. The forensic

report clearly proved existence of human blood on the knife, pant etc. The pant was of the accused but no explanation was offered in this regard under Section 313 Cr.P.C. The knife was recovered at his pointing while in the custody of the police, therefore, the said recovery was as per Section 27 of the Act, 1872. For all these reasons, he submitted that the appeal is liable to be dismissed.

(9) The prosecution produced five witnesses i.e. P.W.1-Ram Kesan who is Informant and father of the accused, P.W.2-Jagjiwan a resident of the same village as the accused and witness of recovery, P.W.3-Sri Radhye Shyam Mishra, Head Constable at P.S.-Mall who had made G.D. entries and lodged the F.I.R., P.W.4-Sanjay Kumar, S.H.O. of P.S.-Mall, Lucknow and Investigating Officer of the case, P.W.5-Dr. Amit Kumar Gupta who conducted autopsy on the body of the deceased. In addition to it , the court summoned a court witness C.W.1-Smt. Sunita, however, her testimony is not very relevant as it was only with regard to juvenility claimed by the accused which was decided against him by the trial court and this issue has not been pressed in appeal before us by the accused. Statement of the accused was recorded under Section 313 Cr.P.C. on 30.10.2018 (10) The case of defence is one of denial.

(11) The case of prosecution is based on circumstantial evidence.

(12) As per the post mortem report conducted on 28.03.2015 at 12:10 P.M., the deceased has following ante-mortem injuries:-

> "Anti Mortem Injuries (1) Multiple Incised Wound-in area 7 cm x 5 cm x Little bone deep present on dorsum of (Lt) little ring multiple finger.
>
> (2) Incised Wound 3 cm x 1 cm x muscle deep present on posterior medial surface of left forearm 7 cm above wrist joint.
>
> (3) Incised wound 2.5 cm x 1 cm x muscle deep present on postero medial surface (Lt.) forearm above injury no (2) (4) Multiple incised wound in area 8 cm x 3 cm x bone deep present on dorsum of Rt. index middle & ring finger (5) multiple incised wound in area 22 cm x 18 cm present on Front of neck and front & upper part of chest just above & below supra sternal notch.
>
> (6) stab wound 3 cm x 1 cm x chest cavity deep present on front of (Lt) side chest 7 cm medial (Lt) nipple.

Margins of all above injuries are sharp clear cut and well defined.

size of wound in injury No. (5) Varying from 2 cm x 5 cm x skin deep to 3 cm x 1 cm x muscle deep. Tailing present from to Rt. present from side."

The cause of death was shock and hemorrhage due to ante-mortem injuries and incise wounds.

(13) PW.5-the autopsy surgeon has proved the post-mortem report. He has opined that the ante-mortem injuries are not self-inflicted and that they were sufficient to cause death. He has stated in cross-examination that injury nos.1 to 5 were incise wounds which could be caused by sharp edged weapon.

(14) From medical evidence on record i.e. post-mortem report and the testimony of the autopsy surgeon, it is proved beyond doubt that death of Rajpati was homicidal. The question is whether she was murdered by the appellant-accused i.e. her husband.

(15) In a case of circumstantial evidence, the burden is upon the prosecution to prove the chain of events which may point towards the guilt of the accused and none else. When any fact is especially within the knowledge of any person (accused), the burden of proving that fact shifts upon him.

(16) Now, case of the prosecution is that the deceased-wife was murdered in the house of the appellant-husband in the night and the said fact has came in the testimony of the appellant's father who is informant and P.W.1 of the case, therefore, the burden was upon the appellant to offer an explanation as he alone would have knowledge as to what transpired in the dead of the night when the incident occurred and having failed to do so, this attracted Section 106 of the Act, 1872 and the trial court has convicted the appellant as he failed to offer any explanation, much less an acceptable one.

(17) As already stated, case of the defence is one of denial.

(18) There are two witnesses of fact. P.W.1-Ram Kesan is father of the appellant but interestingly he is the prosecution witness. He claims to reside in another house about 70 meters away from the new house where the appellant used to reside with his wife and where the crime is said to have been committed and the body of the accused wife was found lying on a cot. He has stated in his testimony that at around 12:30 A.M. in the night intervening 27/28.03.2015 his son came to him in a nervous state and asked him to come along with him. He informed him that at about half an hour ago, a person had entered the house through the stairs situated inside the house, opened the door, let-in three other persons who were masked, all of them overpowered him, administered him a tablet with water, consequent to which, he became unconscious. He woke up after his daughter started crying and found that she was lying by his side in a pool of blood. She had injuries on her body and neck. According to P.W.1, on receiving this information, he went to the place of incident along with his son (appellant) whereupon he saw his daughter-in-law lying dead. He informed the police whereupon an F.I.R. was lodged on his tehrir. P.W.1 has proved the tehrir submitted by him. P.W.1 has stated that when his son came to him with the aforesaid information, he was not able to speak properly and there was 'puke' on his mouth and body, which was smelly. In his cross-examination, he has reiterated the aforesaid story and in addition to it has stated that there was a knife lying by the side of the deceased body. He has also stated that he went to the police station along with the accused-Kamlesh and after lodging of the F.I.R., the accused-Kamlesh was detained by the police at the Police Station-Mall and the accused was sent to jail from the police station itself. He has then stated that when he reached the house where the incident took place, he found the belongings to have been scattered and came to know later that some loot had also taken place and his

daughter-in-law was murdered. He has also stated in his cross-examination about 'puke' lying at the scene of crime. He has also stated that Daroga had got his thumb impression on certain plain papers on which nothing had been written. He has then stated that his son used to reside with his wife happily and there were no hard feelings amongst them nor any quarrel took place between them. They lived happily.

(19) When we examine the testimony of P.W.1, we find that it proves the fact that information about the death of Rajpati was given by her husband at 12:30 in the night intervening 27/28.03.2015 to P.W.1 within half an hour of the crime. P.W.1 who is father of the husband (appellant) has clearly deposed that son resided in another house about 70 meters away from the house where P.W.1 was sleeping with his wife. P.W.1 is father of the appellant. In cross examination of P.W.1, no such suggestion has been made on behalf of the defence that the testimony of P.W.1 is false nor that the appellant was not present in the house where the deceased was done to death in the night intervening 27/28.03.2015 nor that murder had not taken place at the said house rather it had taken place some where else. No such suggestion was made in the cross-examination of P.W.1. In fact, in cross-examination also, P.W.1 has reiterated that it is the appellant who came at 12:30 in the night and informed him about death of his wife and about the story already mentioned in his examination in chief. Therefore, considering the proximity in time of the information provided by accused to his father, within half an hour of the crime, presence of appellant at the house with his wife in the night intervening 27/28.03.2015 is proved. There is no reason to disbelieve the father of the accused on this aspect of the matter. There is no evidence to prove any enmity between the father (P.W.1) and the son (accused). Of course, in cross-examination, P.W.1 has referred to a knife lying by the side of the deceased body a fact which he did not mention in the F.I.R. He has also stated that the items lying in the room were scattered and later he came to know that some loot had been committed by certain unknown persons who had murdered his daughter-in-law but this appears to be an attempt to save his son as nothing of this sort was mentioned in the F.I.R. Further, no F.I.R. of any loot etc was lodged nor there is any evidence to show that anything was stolen or looted from the house.

(20) In a case such as the one at hand where death occurs in the dead of the night in a room/ house where the appellant-husband and the deceased-wife were residing, once presence of appellant at the time of commission of the crime is proved and there is no suggestion by him to the contrary in cross-examination of P.W.1 then the accused would be obliged to offer an explanation in terms of Section 106 of the Act, 1872 as he alone would know as to what transpired in the dead of the night and how the death of the wife occurred, which, apparently based on medical evidence was not natural and was a homicide especially as the deceased had six ante-mortem incise wounds and one stab wound and as per the medical evidence, death occurred due to shock and haemorrhage from the ante-mortem injuries. In cross-examination of P.W.1, the story narrated by him in examination in chief as said to have been told by none else than the appellant, has not been suggested by the defence as being false or concocted. In fact, the same version has been reiterated by P.W.1 who is father of the appellant. There is no suggestion in cross-examination of P.W.1 by the defence that the appellant was not present in the house when the incident took place or that the testimony of P.W.1-father of the appellant about the appellant having informed him about the incident at about 12:30 in the night was false or concocted.

(21) We may in this very context refer to decision of Hon'ble the Supreme Court in the case of 'Trimukh Maroti Kirkan vs. State of Maharastra' (2006) 10 SCC 681 wherein it is held as under:-

> "14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecution 1944 AC 315 quoted with approval by Arijit Pasayat, J. in State of Punjab vs. Karnail Singh (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:
>
> (b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

...

21 In a case based on circumstantial evidence where no eye- witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of Tamil Nadu v. Rajendran (1999) 8 SCC 679 (para 6); State of U.P. v. Dr. Ravindra Prakash Mittal AIR 1992 SC 2045 (para 40); State of Maharashtra v. Suresh (2000) 1 SCC 471 (para 27); Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731 (para 15) and Gulab Chand v. State of M.P.

(1995) 3 SCC 574 (para 4)].

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime....."

(22) This decision was followed in the case of 'Sabitri Samantaray vs. State of Odisha' (2023) 11 SCC 813 wherein in para no.19 it was held as under:-

> "15. This Court in its judgment in Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10 SCC 681 has also observed:-
>
> "15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

...

19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events. [See Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681]"

> (23) It was also followed in another decision reported in (2014) 12 SCC 211 'State of Rajasthan vs. Thakur Singh' wherein para nos.17 to 20 and 22 reads as under:-
>
> "17. In a specific instance in Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681 this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said:

> "22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

18. Reliance was placed by this Court on Ganeshlal v. State of Maharashtra (1992) 3 SCC 106 in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in Dnyaneshwar v. State of Maharashtra (2007) 10 SCC 445 this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In Jagdish v. State of Madhya Pradesh (2009) 9 SCC 495 this Court observed as follows:

> "It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."

....

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts."

(24) In the light of the law referred above, we, now, turn to the statement of appellant-accused under Section 313 Cr.P.C. In ordinary circumstances, an accused is entitled to remain silent in his statement recorded under Section 313 Cr.P.C. but not in a case such as the one at hand where the prosecution has proved his presence at the time of commission of the crime. In such a situation, the appellant-accused is required to furnish an explanation. Interestingly, while responding to question no.2 with regard to the narration of events which took place in the night based on the prosecution's case (P.W.1' statement), he replies that he has no knowledge about the same and in response to question no.9 as to why witnesses had deposed against him, he has stated that they had given false

testimony. He does not endorse the story narrated by P.W.-his father in examination-in-chief though no such suggestion to the contrary was made in cross-examination of his father. In cross-examination by Defence, P.W.1 has reiterated that the appellant-accused i.e his son had come to him at 12:30 and had informed him about the incident whereupon both of them went to the scene of crime where his daughter-in-law was lying dead and then he along with his son went to the police station. No doubt, he has offered an explanation as to why he could not participate in funeral which according to him was on account of his alleged detention at the police station and he has also stated that he had good relations with his wife and had married her inspite of opposition of the people but after denying the testimony of his father P.W.1 as false and feigning ignorance of the events suggested to him, he does not offer any alibi, nor any explanation as to what transpired in the night when he along with his wife were in the same room in his house. Testimony of P.W.1 is sufficient to prove presence of the appellant at the time of commission of the crime. Likewise is his reply to question no.3. Absence of any explanation in his statement under Section 313 Cr.P.C. much less of an acceptable one would lead us to believe that considering the circumstances in which the death occurred it is the appellant who had committed the crime and any other possiblity is ruled out.

(25) P.W.2-Jagjeevan is resident of the same village. He is witness of the inquest and recoveries of clothes, plain and blood stained soil, slippers and puke vide Ex.Ka.4, 4A, 5 and 6. In his examination-in-chief. He has accepted his signatures on the aforesaid recovery memos and the recoveries made by the police, however, in cross-examination, he has stated that papers had been written at the police station and he had signed them and that he had not gone to the scene of crime. He has also stated that deceased and the accused lived happily and did not have strained relationship. He has then stated that the police did not recover any items in his presence from the scene of crime. He is resident of the same village, therefore, the possibility of such testimony merely to help the appellant-accused cannot be ruled out. In any case, his testimony has no bearing so far as the date, time of the incident and presence of the accused at that time is concerned.

(26) P.W.3 is the Constable Muharir who had prepared Chic F.I.R. and signed it and had also made requisite entries in the G.D. In his cross-examination which was held after about almost five months of the examination-in-chief, he has stated that informant had come to police station to lodge the F.I.R. accompanied by his son i.e. the appellant-accused who was in an injured state. Interestingly, neither in the F.I.R. nor in the statement of P.W.1 nor in the statement of the accused recorded under Section 313 Cr.P.C., any injury on the body of the accused is mentioned as having been inflicted.

(27) Events which P.W.1 states as having been narrated to him by son, though the latter does not accept it in his statement under Section 313 Cr.P.C., rather denies it, are even otherwise unbelievable and highly improbable. It is unfathomable as to how, if the appellant-accused was asleep did he know that one person had entered the house using the stairs and then had opened the door letting in three other persons. If he was awake, then, the accused would have certainly seen one person alighting from the stairs and going towards the door to open it which was the main entry door as per the siteplan proved by P.W.1 and P.W.4 and the stairs were in the Aangan of the house and for somebody to open the outside door, he would have to travel from Aangan to courtyard and then to the room where the deceased and the accused were lying and where the deceased was

ultimately murdered. He would have seen the said person approaching the entry door to open it and let in three other persons and would have certainly raised an alarm which would have woken-up the wife and they would have put up some fight. If he was asleep then there was no way that he would have seen the aforesaid incident till the entry of the three outsiders from the main door. If any intoxicant and water was administered to the accused who was a young man of twenty five years then it is inexplicable as to how he regained consciousness within half an hour and by that time the crime had also been committed and he approached his father within half an hour of the incident. It is highly improbable that somebody after entering the home administered a tablet forcibly to the accused, made him drink water, resulting in him becoming unconscious, the crime being committed, he regaining consciousness and reporting the incident to his father, all of this within half an hour. Apart from the fact that this is not the explanation offered by the accused it is even otherwise unbelievable.

(28) In the F.I.R. and testimony of P.W.1, no injury on the body of the accused is mentioned. The injury is mentioned for the first time in the medical examination report dated 28.03.2015 which has not been exhibited and the doctor has not been examined, that too an injury only on the left hand fingers but in another report of the very next date i.e. 29.03.2015 which has also not been exhibited, it is mentioned that there is no external injury visible. Moreover, the report dated 28.03.2015 nowhere says that accused was unconscious and disoriented, rather it says that he was oriented in time, place and person. None of these documents have been exhibited and therefore, they cannot be seen in evidence nor the doctor who may have examined the accused has been produced by the defence. The accused has not stated anything about these injuries in his statement under Section 313 Cr.P.C. nor explained them. In these circumstances, the events which took place in the night as stated to have been narrated by the accused to the father-P.W.1, are also not believable.

(29) P.W.4 is the investigating Officer of the case who had made the recoveries and prepared the recovery memo. He has proved the recoveries and recovery memos i.e. Ex.Ka.4 to 6 as also the siteplan Ex.Ka.7 and 10. As regards the statement of P.W.1 and 2 regarding the recoveries it has already been discussed earlier and their statements in cross-examination appear to be only an attempt to help the accused considering the relation of P.W.1 with him and also that P.W.2 is resident of the same village.

(30) As regards the statement of P.W.4 that on medical examination of accused on 28.03.2015 in the medical report the word 'unconscious' was mentioned, this is not correct apart from the fact that the said medical report has not been exhibted nor the doctor examined. There is no observation/ opinion of the doctor that the accused was unconscious rather it is to the contrary.

(31) As per the forensic report dated 02.12.2016, blood was found on item nos.1 to 8 and human blood was found on item nos.1, 3 and 8, that is the knife, vest and blood stained soil, but, the accused was not confronted with this forensic report during examination under Section 313 Cr.P.C. This is an omission on the part of the trial court otherwise the Report was not challenged by the appellant before the trial court and in this context Sections 293 and 294 Cr.P.C. are relevant. Inspite of it, for the reasons already discussed hereinabove, this by itself does not enure to the benefit of the accused.

(32) As regards contention of learned counsel for the appellant that the sitemap itself shows staircase in the Angan which points towards possibility of outside entry into the house firstly in his statement under Section 313 Cr.P.C. the accused has not offered any statement in this regard and secondly, even otherwise, for the reasons already given hereinabove, there is no proof of any such outside entry and the same appears to be highly improbable.

(33) The medical evidence proves that death of the deceased wife was homicidal. Even though motive has not been proved stricto sensu and it is a case of circumstantial evidence, nevertheless, in a given case such as the one at hand where the murder has taken place in the night at a house where husband and wife were living and the presence of the accused at the time of commission of the crime is also proved then merely because there is no evidence regarding motive, by itself will not enure to the benefit of the accused. We may in this context refer to the decision of Hon'ble the Supreme Court in the case of 'State of U.P. vs. Kishan Pal' (2008) 16 SCC 73 wherein the importance of motive in cases of circumstantial evidence was examined and it was held - 'Motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime'. It was further held that 'motive may be considered as circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one'. No doubt, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused but in view of what has been noticed hereinabove, merely because, there was no evidence of motive would not weaken the case of the prosecution because the circumstances in which the murder took place, the absence of any explanation by the accused in his statement under Section 313 Cr.P.C. his denial of statement of his father, and the impossibility of narration of events as an explanation attributed by P.W.1 to accused, as discussed. We may also in this very context refer judgment reported in (1994) 2 SCC 220 'Dhananjoy Chatterjee Alias Dhana vs. State of W.B.' wherein Hon'ble the Supreme Court has held as under:-

> "10. We shall now deal with and consider various circumstances relied upon by the prosecution which have been accepted as conclusively established both by the trial court and the High Court to connect the appellant with the crime:
>
> (1) Motive: In a case based on circumstantial evidence, the existence of motive assumes significance though the absence of motive does not necessarily discredit the prosecution case, if the case stands otherwise established by other conclusive circumstances and the chain of circumstantial evidence is so complete and is consistent only with the hypothesis of the guilt of the accused and inconsistent with the hypothesis of his innocence....."

(34) Similarly in the case of 'Prem Singh vs. State (NCT of Delhi)' (2023) 3 SCC 372, Hon'ble the Supreme Court held as under:-

> "44. It is also pertinent to notice that in the said case of Sharad Birdhichand Sarda, this Court also enunciated the principles for using the false explanation or false

defence as an additional link to complete the chain of circumstances in the following terms:

"158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar AIR (1955) SC 801 to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case.....

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise....."

(35) The Investigating Officer should have tried to collect evidence and produce witnesses to prove motive on the part of the accused but merely because he failed to do so although in his testimony he has referred to the fact that on investigation in the village, he was told by the villagers that about certain facts which constituted motive on the part of the accused to commit the murder, this is at best a lapse on the part of the Investigating Officer in not recording the statement of such witnesses and producing them before the court and absence of motive cannot be a ground to reject the prosecution's case in the facts and law already discussed.

(36) We are of the opinion that once it is proved that death was homicide, crime was committed in the night that too in the house of the accused where he was residing with his wife, at 12:30 in the night, the accused informed his father who was residing barely seventy meters away who then along with the accused went to the scene of crime, saw the deceased lying in a pool of blood with injuries, went to the police station and he lodged the F.I.R. at 04:25 A.M. and he was present at the time of commission of the crime is proved by P.W.1-his father and there was no suggestion in the cross-examination of P.W.1 or the Investigating Officer by the defence that it was not so, and in fact, he denies the testimony of P.W.1 as false but does not offer any other explanation, then, the initial burden considering the medical evidence on record as also the recoveries made stood discharged by the prosecution as chain of events were complete and pointed towards only one one possibility that is the crime having been committed by the appellant and none else and then it shifted upon the accused for offering an acceptable explanation, which he did offer. Even if, we ignore the recoveries,

an explanation had to be offered in view of Section 106 of the Act, 1872 but none was offered.

(37) As regards recovery of weapon used in the crime, a doubt was sought to be created by learned counsel for the appellant as to the time of arrest based on testimony of P.W.1, according to whom, the accused had accompanied him to the police station to lodge the F.I.R. and was detained and sent to prison straightaway from the police station whereas according to the statement of P.W.4, the accused was arrested in the evening near the village. According to learned counsel for the appellant this creates a doubt on the veracity of the arrest as also the recovery of the weapon on the alleged pointing of the accused while in police custody. Moreover, he also emphasized the fact that the weapon produced during trial was different from the one recovered. Although, the trial court has dealt with this aspect of the matter and opined that the knife recovered and mentioned in recovery memo 8 did not have a iron handle rather the handle only contained an iron strip towards the bottom, therefore, the weapon produced during trial was in noway different from the one recovered. There is no reason to disbelieve the recovery of the items mentioned in recovery memos i.e. Ex.Ka.4 to Ex.Ka.6. However, in view of what has been argued by learned counsel for the appellant, even if, this recovery is ignored for a moment, it would not make much of a difference to the case of the prosecution as, recovery of the weapon used in crime is not mandatory for proving an offence of murder beyond reasonable ground if there are other reliable evidence, even in a case based on circumstantial evidence, to prove the guilt of the accused. No doubt, P.W.1 has stated in his cross-examination that he was made to sign blank papers though, in examination-in-chief, he did not make any such statement rather, he identified his thumb impression on the exhibits of recovery and has clearly stated about recovery of said items in his presence from the scene of crime. P.W.2 has also accepted his signature on the Ex.Ka.4 to Ex.Ka.7 and the inquest but has stated in cross-examination that he had put the signatures at the police station, this by itself does not weaken the prosecution case especially as in the examination-in-chief, he has accepted his signatures on the aforesaid documents and also the recoveries were made in his presence though in his examination-in-chief he turned around on this aspect so as to help the accused, a young man of the same village. Recoveries have been proved by the police officer-P.W.4, who had no reason to falsely implicate the accused.

(38) We have gone through the judgment of the trial court and in the view of the discussion made hereinabove, we are of the opinion that the prosecution was able to prove the chain of events completely i.e. firstly, the fact that deceased's death was not natural, it was homicidal. Secondly, body was found in the house of the accused. Thirdly, the incident took place in the dead of the night intervening 27/28.03.2015 in a room inside the home where the appellant and deceased lived. Fourthly, presence of the accused during the time of commission of the crime was proved. Fifthly, it was proved that the appellant informed about the incident to his father who was sleeping 70 metes away at 12:30 in the same night within half an hour of the crime. Sixthly, the injuries on the body of the deceased as proved by the post-mortem report and the testimony of the autopsy surgeon were sufficient to cause death and established commission of murder. Seventhly, absence of any explanation by the accused in his statement under Section 313 Cr.P.C. regarding the incident which took place in the night of 27/28.03.2015. Eighthly, denial of testimony of P.W.1 by the accused. Ninthly, explanation contained in the statement of P.W.1 attributed to accused being highly improbable and unacceptable without any proof and its denial by the accused without offering any

explanation for the events under Section 313 Cr.P.C. Tenthly, no F.I.R. regarding loot by outsiders etc being lodged nor there being any evidence of outside entry. All of these point towards only one possibility that is the crime having been committed by the accused.

(39) From the medical evidence on record, it is proved that injuries were sufficient to cause death as opined by autopsy surgeon i.e. P.W.5 and as the accused alone was present with his wife in the dead of the night when the crime was committed, he alone could have committed the crime of murder based on the circumstances discussed hereinabove which the prosecution has succeeded in proving. Accordingly, the charge of murdering his wife is proved against the appellant which is punishable under Section 302 Cr.P.C.

(40) Although, we do not approve of the findings of the trial court on the question of motive and also its discussion of statement of P.W.4 with reference to the alleged confessional statement made by the accused while in police custody in that context as, that is not the correct approach but, inspite of it, as it does not materially affect the result of the trial or this appeal, therefore, in view of the above discussion, the appeal is dismissed. The sentence of life imprisonment with fine has rightly been imposed by the trial court.

(41) A copy of this judgment along with original records be remitted to the court below for necessary action, if any.

(Om Prakash Shukla,J.) (Rajan Roy,J.) Order Date :- 03.03.2025 Shanu/-