

**Sukhpal Singh**

**v.**

**NCT of Delhi**

(Criminal Appeal No. 55 of 2015)

07 May 2024

**[B.R. Gavai and Sandeep Mehta,\* JJ.]**

### **Issue for Consideration**

Appellant was convicted u/s.302, Penal Code, 1860 for the murder of his wife. Courts below whether justified in holding that the statement of Complainant-PW-1 recorded in proceedings u/s.299, Code of Criminal Procedure, 1973 could be read as a piece of substantive evidence; whether the prosecution could establish the links in the chain of incriminating circumstantial evidence.

### **Headnotes**

**Code of Criminal Procedure, 1973 – s.299 – Record of evidence in absence of accused – Evidence Act, 1872 – s.33 – Appellant murdered his wife owing to her suspected infidelity however, fled away from the crime scene and remained absconding for nearly 10 years – Charge sheet was filed u/s.299 showing him to be an absconder – Complainant (PW-1) was examined on oath in proceedings u/s.299 where he gave detailed account of the sequence of events witnessed by him – However, he could not be produced for deposition in the trial which resumed after the arrest of the appellant, as he could not be found at the address given in the FIR despite all sincere efforts – Statement of PW-1 recorded during proceedings u/s.299 was relied upon as a piece of incriminating evidence against the appellant, apart from other incriminating circumstantial evidences and appellant was convicted u/s.302 – Conviction and sentence affirmed by High Court – Sustainability:**

**Held:** s.299 (1) is in two parts, the first part provides for proof of jurisdictional fact in respect of abscondence of an accused person and the second that there was no immediate prospect of arresting him – In the event, an order under the said provision is passed, deposition of any witness taken in the absence of an accused may be used against him if the deponent is dead or incapable of giving evidence or cannot be found or his presence

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cannot be procured without any amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable – In the present case, circumstances of motive, last seen, confession and abscondence from the crime scene after committing the crime etc. were all spoken by the witness (PW-1) in his statement recorded on sworn affirmation during the proceedings u/s.299 – His statement by itself provides a complete chain of circumstantial evidence sufficient to establish the guilt of the appellant – Thus, in light of the provisions of s.299 r/w s.33 of the Evidence Act, 1872, the trial Court and High Court were justified in holding that the statement of PW-1 recorded in these proceedings was fit to be read as a piece of substantive evidence – Prosecution established a clinching and complete chain of incriminating circumstantial evidence pointing exclusively towards the guilt of the appellant and totally inconsistent with his innocence or the involvement of any other person in the crime – Impugned judgments not interfered with. [Paras 31, 36, 38, 39, 47, 48, 50]

**Evidence Act, 1872 – s.106 – Burden of proving fact especially within knowledge – Appellant failed to offer explanation for the homicidal death of his wife in the house during night time when only him and deceased were present, leading to interference of guilt by virtue of s.106:**

**Held:** The circumstances leading to murder of appellant's wife were in his exclusive knowledge – He offered no explanation as to the manner in which she was strangled to death within the confines of the room where only he and the deceased were present – The bald plea of denial offered by the appellant by way of an explanation to this gravely incriminating circumstance is not sufficient to absolve him of the burden cast upon him by virtue of s.106. [Para 46]

### Case Law Cited

*Nirmal Singh v. State of Haryana* [2000] 2 SCR 807 : (2000) 4 SCC 41; *Jayendra Vishnu Thakur v. State of Maharashtra & Another* [2009] 8 SCR 591 : (2009) 7 SCC 104 – relied on.

### List of Acts

Code of Criminal Procedure, 1973; Evidence Act, 1872; Penal Code, 1860.

**Sukhpal Singh v. NCT of Delhi****List of Keywords**

Section 299 of Code of Criminal Procedure, 1973; Record of evidence in absence of accused; Piece of substantive evidence; Incriminating evidence; Links in the chain of incriminating circumstantial evidence; Burden of proving fact especially within knowledge; Suspected infidelity; Absconder; Abscondence of accused; No immediate prospect of arrest; Motive; Last seen together; Homicidal death; Wrong explanation by accused in statement under Section 313 Code of Criminal Procedure, 1973; Section 106 of Evidence Act, 1872; Circumstantial evidence; Complete chain of circumstances; Murder inside the house.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 55 of 2015

From the Judgment and Order dated 07.01.2010 of the High Court of Delhi at New Delhi in CRLA No. 296 of 2003

**Appearances for Parties**

Ambreesh Kumar Aggarwal, Adv. for the Appellant.

Rajan Kumar Chourasia, Sanjay Kumar Tyagi, Ms. Seksha, Mukesh Kumar Maroria, Advs. for the Respondent.

**Judgment / Order of the Supreme Court****Judgment**

**Mehta, J.**

1. The instant appeal is directed against the judgment dated 7<sup>th</sup> January, 2010 passed by the High Court of Delhi in Criminal Appeal No. 296 of 2003 whereby the appeal filed by the appellant against the judgment and order of conviction and sentence dated 6<sup>th</sup> March, 2003 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi (hereinafter being referred to as the 'trial Court') was rejected.
2. By the said judgment, the trial Court convicted the accused appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter being referred to as the 'IPC') and sentenced him to life imprisonment and fine of Rs.2000/- (in default further rigorous imprisonment for six months).

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3. Leave was granted by this Court in this matter on 8<sup>th</sup> January, 2015 and the accused appellant was released on bail on furnishing bail bonds to the satisfaction of the trial Court.

#### **Brief facts:-**

4. The accused appellant was married to Usha and three children were born out of the wedlock. However, the spouses got embroiled in a matrimonial strife and thus the appellant left company of his wife Usha and started residing at his village Khatta, U.P.
5. The officers of Police Station Bhajan Pura received a wireless message on 20<sup>th</sup> May, 1990 from the PCR regarding an incident which had taken place outside the shops of Rori and Badarpur. Acting on the said information, Head Constable Mohan Lal, Constables Jai Pal, Bhagwan Dass and Ramesh Chand along with Inspector Ishwar Singh reached House no. J-387, Gali No. 14, Kartar Nagar, Delhi where Usha w/o Sukhpal (the appellant herein) was found lying dead on a cot in a room of the said house. On cursory inspection, abrasions, scratches and other injury marks associated with bleeding were noticed on the neck, mouth, shoulder and private parts of the deceased Usha. Marks of dragging were also found on the right leg below the knee. Strips of tablets were found scattered around the cot on which the dead body was lying. The police officials claim to have recovered a handwritten note (Exhibit PW-12/E) from the crime scene bearing a recital indicating that the scribe was the killer of Usha. The prosecution alleges that the said note was written by the accused appellant.
6. Statement (Exhibit PW-1/A) of Ashok Kumar Pathak, resident of House No. J-386, Gali No. 14, Kartar Nagar, Delhi was recorded by the police officials on 20<sup>th</sup> May, 1990 wherein he stated that he was residing in the immediate vicinity of House No. J-387, Gali No. 14, Kartar Nagar, Delhi, where Usha with her husband Sukhpal (accused appellant) and three children had been residing for the last 3-4 years. Ashok Kumar Pathak was serving with M/s. R.P. Associates and that he had got Sukhpal employed in that very firm. Sukhpal suspected his wife Usha of infidelity which often led to quarrels between them and, therefore, Sukhpal left his wife and children and started residing in village Khatta, U.P. He used to commute from the village for attending to his job. Sometimes, he would also come and stay with Usha. Four days prior to the alleged occurrence, Sukhpal had

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visited Usha and on that day, Usha's sister (Sudha) had also come there. Sukhpal quarrelled with Usha and went away. On the next day, Usha's sister, Sudha (PW-10) took the three children of Usha and went to her house. On the day prior to incident, i.e., on 19th May, 1990, in the evening when Ashok Kumar Pathak had returned from duty and got free after having his meals, at about 9.30 p.m., he saw that Sukhpal had come to visit Usha on his cycle. The spouses were talking while sitting on a cot in the courtyard. He went to the terrace for sleeping and after some time, it started raining so he came downstairs and saw that Sukhpal and Usha had also gone inside their room. The next morning i.e. 20<sup>th</sup> May, 1990, while he was carrying out his daily chores, he saw Sukhpal's cycle parked in the courtyard and presumed that he and Usha were inside the house. He did not see any movement in the house for the entire day and even at about 5.30 p.m., he saw the cycle of Sukhpal parked at the same place but neither Sukhpal nor Usha were to be seen. So, he called out from outside, but nobody responded, on which he went into the room and found Usha lying dead on a cot. Sukhpal was not present there. He informed the neighbours who, in turn, called the police. He bore a suspicion that Sukhpal (appellant herein) might have killed Usha sometime during the night and had fled away. This statement was taken as a complaint and based thereupon, FIR No. 213 of 1990 (Exhibit PW-13/F) came to be registered at P.S. Bhajanpura for the offence punishable under Section 302 IPC.

7. The dead body of Usha was subjected to autopsy and the post mortem report (Exhibit PW-15/A) was received with a pertinent opinion that cause of death was "Asphyxia resulting from manual strangulation". A confession letter/note (Exhibit PW-12/E) was found below the cot where the dead body was lying and it was seized vide memorandum (Exhibit PW-13/B) and spot inspection memo (Exhibit PW-12/B) was prepared.
8. The Investigating Officer (PW-13) collected two letters (Exhibit PW-12/C and PW-12/D) purportedly written by the accused appellant from the employer namely Sanjiv Jain (PW-8). Specimen Pad (Exhibit PW-13/O) of the employer was also collected and seized vide memorandum (Exhibit P-13/N).
9. The prosecution alleges that the accused appellant fled away from the crime scene. Efforts were made to trace him out without any

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success and thus proceedings under Section 82 and Section 83 of the Code of Criminal Procedure, 1973 (hereinafter being referred to as 'CrPC') were initiated against him. The accused appellant was declared to be a proclaimed offender and a charge sheet came to be filed against him under Section 299 CrPC by showing him to be an absconder. As per the prosecution case, the complainant Ashok Kumar Pathak, Head Constables Mohan Lal and Surender Kumar and Inspector Bal Kishan were examined on oath in proceedings under Section 299 CrPC and the file was consigned to the record room.

10. The accused appellant could be apprehended on 9th August, 2000 i.e. nearly after ten years of the incident. He gave a disclosure statement pointing out the place of incident. His specimen handwritings (Exhibits PW-5/D, 5/E and 5/F) were obtained while he was in police custody. Thereafter, the confession note (Exhibit PW-12/E), the specimen handwritings (Exhibits PW-5/D, PW-5/E and PW-5/F) along with admitted handwritings (Exhibits PW-12/C and PW-12/D) (collected from the employer of accused appellant) were sent to FSL for comparison. The handwriting expert (PW-24) issued a report (Exhibit PW-12/F) opining that the confession letter/note (recovered from the crime scene) was in the handwriting of the accused appellant.
11. A supplementary charge sheet came to be filed against the accused appellant for the offence punishable under Section 302 IPC. The trial Court framed charge against the accused appellant for the said offence. He pleaded not guilty and claimed trial. The prosecution examined 24 witnesses and exhibited 48 documents to support its case.
12. It is relevant to mention here that the complainant Ashok Kumar Pathak, was not produced for deposition in the trial which resumed after the arrest of the accused appellant. The trial Court held that the non-examination of complainant Ashok Kumar Pathak was not a deliberate act of the prosecution and rather the same was beyond the control of prosecution. The trial Court further found that complainant Ashok Kumar Pathak was examined on oath on 17th July, 1991 in proceedings under Section 299 CrPC. In this sworn statement, Ashok Kumar Pathak proved his signature on the statement[Exhibit PW-1/A (which led to registration of FIR)] made by him to the police on 20<sup>th</sup> May, 1990 and gave a detailed account of the sequence of events witnessed by him. The complainant Ashok Kumar Pathak could not

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be examined in the trial proceedings post arrest of the accused as he could not be found at the address given in the FIR despite all sincere efforts.

13. The trial Court held that since Ashok Kumar Pathak could not be located despite genuine efforts, his sworn deposition recorded in absence of the accused appellant was liable to be read in evidence as per the provisions of Section 299 CrPC. Accordingly, the said statement was relied upon as a piece of incriminating evidence against the accused appellant.
14. The trial Court also placed reliance on the confession note/letter (Exhibit PW-12/E) holding that the same was found to be in the handwriting of the accused appellant by the handwriting expert (PW-24) vide report (Exhibit PW-12/F). The said confession was treated to be an admission and a strong link of incriminating circumstantial evidence against the appellant.
15. Placing reliance upon the evidence of Ashok Kumar Pathak recorded in proceedings under Section 299 CrPC and the evidence of the handwriting expert (PW-24), the trial Court held the confession note (Exhibit PW-12/E) to be an unimpeachable piece of evidence sealing the fate of the accused. Corroboration thereto was sought from the evidence of Sudha (PW-10), sister of the deceased Usha. By relying on these incriminating links of circumstantial evidence, the trial Court proceeded to convict and sentenced the accused appellant as above vide judgment dated 6<sup>th</sup> March, 2003.
16. The appeal preferred by the accused appellant in the High Court of Delhi was rejected by learned Division Bench of High Court vide judgment dated 7<sup>th</sup> January, 2010 holding that the confession note (Exhibit PW-12/E) written by the accused appellant proved his culpability in the crime. The prosecution had established that the accused appellant was in company of the deceased Usha at her house where she was murdered in the intervening night of 19<sup>th</sup> and 20<sup>th</sup> May, 1990. The prosecution also established that the deceased was done to death by violence in the said intervening night and that the accused appellant had absconded to flee from justice which established his guilty conduct.
17. The accused appellant has challenged the above judgment affirming his conviction and sentence through this appeal by special leave.

**Digital Supreme Court Reports****Submissions on behalf of the appellant: -**

18. Learned legal aid counsel appointed by Supreme Court Legal Services Committee (SCLSC) for representing the appellant advanced extensive submissions to assail the impugned judgment. He urged that:-
- (i) The trial Court as well as the High Court committed grave factual error in holding that complainant Ashok Kumar Pathak was examined on oath in proceedings under Section 299 CrPC. As per learned counsel, this finding is totally contrary to the record because the statement of complainant Ashok Kumar Pathak relied upon by the trial Court and the High Court is actually the statement of the said witness recorded by the SHO, PS Bhajan Pura under Section 161 CrPC which was proved by the Investigating Officer (PW-13) in proceedings under Section 299 CrPC.
  - (ii) The confession note (Exhibit PW-12/E) is a fabricated piece of evidence because the prosecution did not make any endeavour to get the two admitted documents (Exhibit PW-12/C and PW-12/D) collected from the employer of the accused appellant, i.e., Sanjiv Jain (PW-8) compared with the confession note (Exhibit PW-12/E). This contention was made without prejudice to the plea that the very process of collecting these documents is under a cloud of doubt because the Investigating Officer (PW-13) could not have had any idea that the accused had worked in M/s. R.P. Associates.
  - (iii) The handwriting expert's report (Exhibit PW-12/F) and the testimony of the handwriting expert (PW-24) is not reliable, since the expert did not give any opinion after comparing the admitted writings (Exhibit PW-12/C and PW-12/D) (seized from the employer of the accused appellant) with the confession note (Exhibit PW-12/E).
  - (iv) Without prejudice to the above, learned counsel submitted that from a visual comparison of the confession note (PW-12/E) and the specimen handwritings of the accused (Exhibit PW-5/D, PW-5/E and PW-5/F), it would become clear that there is no similarity whatsoever in the two sets of handwritings so as to conclude with any degree of certainty that the scribe of these



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documents was one and the same. He thus urged that the report (Exhibit PW-12/F) of the handwriting expert (PW-24) is unreliable and cannot be pressed into service for affirming the guilt of the accused.

- (v) He urged that the evidence of Sudha (PW-10) is totally unreliable and not trustworthy and deserves to be discarded. It was admitted by the prosecution that the accused appellant and Usha had divorced each other and thus it is totally unbelievable that the accused appellant had come and stayed with Usha, few days before the incident as claimed by Sudha (PW-10). He urged that the evidence of Sudha (PW-10) is not trustworthy and deserves to be discarded.
  - (vi) The claim of the prosecution that the accused appellant was absconding is totally unfounded because in the FIR, it was clearly mentioned that the accused appellant after divorcing deceased Usha had started residing in his village Khatta, U.P. However, the Investigating Officer (PW-13) made no effort whatsoever to apprehend the accused appellant from his village.
  - (vii) It has been admitted by material prosecution witnesses that deceased Usha was indulged in sex trade and that Sandeep Kumar used to solicit her services. Sandeep Kumar and Rajbir Singh (PW-14) were apprehended by the police on suspicion of the death of Usha, however, proper investigation was not made on this aspect. As per him, the possibility of Usha having been murdered by some other person cannot be ruled out.
19. Learned counsel concluded his submissions urging that the case is based purely on circumstantial evidence. The entire chain of incriminating circumstances has to be established leading to the only conclusion consistent with the guilt of the accused and inconsistent with the guilt of anyone else. As per the learned counsel, this chain was not established conclusively by cogent and clinching evidence and hence conviction of the accused appellant as recorded by the trial Court and affirmed by the High Court is unsustainable and should be set aside.

**Submissions on behalf of the respondent-State:-**

20. *Per contra*, learned counsel for the respondent State fervently and vehemently opposed the submissions advanced by learned counsel

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for the appellant and contended that the chain of incriminating circumstances is complete in all aspects exclusively pointing out towards the guilt of the accused. The learned counsel made the following pertinent submissions imploring the Court to dismiss the appeal and upheld the conviction of the accused appellant: -

- (i) That the statement of Ashok Kumar Pathak recorded as PW-1 during proceedings under Section 299 CrPC was rightly relied upon as admissible and reliable piece of evidence. The non-examination of Ashok Kumar Pathak during trial is not a deliberate act of prosecution, rather, the witness could not be examined during regular trial after apprehension of the accused appellant. The witness could not be traced by the prosecuting agency inspite of best efforts. The prolonged abscondence of the accused is primarily the reason for non-examination of Ashok Kumar Pathak.
- (ii) That the complainant Ashok Kumar Pathak in his evidence as PW-1 during proceedings under Section 299 CrPC has admitted his signature on his statement[Exhibit PW-1/A (based upon which FIR was registered)] and also elaborated about the averments made therein which he had witnessed with his own eyes.
- (iii) That the evidence of Ashok Kumar Pathak clearly establishes the presence of accused appellant with Usha on intervening night of 19<sup>th</sup>/20<sup>th</sup> May, 1990, whereafter, the lady was found murdered and the accused was found absconding from the crime scene leaving behind a confessional note. Ashok Kumar Pathak also proved about the motive of the appellant to commit the crime.
- (iv) The testimony of Usha's sister Sudha (PW-10) establishes that the accused appellant used to quarrel with Usha suspecting her infidelity and there were repeated altercations between the spouses. They had indulged in a fight just four days prior to the incident. This also establishes the motive attributed to the appellant to commit the offence.
- (v) That there is no evidence on record to show that accused appellant and Usha were divorced except a bald statement made in this regard in the confession note (Exhibit PW-12/E).
- (vi) That the report (Exhibit PW-12/F) submitted by the handwriting expert, Deepa Verma (PW-24) proves that the handwriting on the

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confession note (Exhibit PW-12/E) which was recovered from the crime scene matched with the handwriting on the two admitted documents (Exhibits PW-12/C and PW-12/D) collected from the employer of the accused appellant and specimen handwritings (Exhibits PW-5/D, PW-5/E and PW-5/F) given by the accused appellant to the police which in turn concludes the fact that the confession note is in the handwriting of the accused.

21. He urged that the prosecution has proved the case against the accused appellant by leading cogent and convincing chain of incriminating circumstantial evidence and implored the court to dismiss the appeal.
22. We have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties and have gone through the judgments of the trial Court and the High Court as well as the evidence available on record.

**Discussion and Conclusion: -**

23. The main thrust of submissions advanced by Shri Ambreesh Kumar Aggarwal, learned legal aid counsel representing the appellant so as to criticise the findings of the trial Court and the High Court was that both the Courts erred in holding that the statement of complainant Ashok Kumar Pathak had been recorded on oath in the proceedings under Section 299 CrPC. As per Shri Aggarwal, only the Section 161 CrPC statement of complainant Ashok Kumar Pathak was exhibited by the Investigating Officer (PW-13) and he never stepped into the witness box.
24. In order to verify this fervent submission of learned counsel for the appellant, we carefully sifted through the record and find that the submission so made is without any foundation. The accused appellant was absconding and could not be arrested and thus, the Investigating Officer (PW-13) made all possible efforts including the procurement of warrant of arrest, attempt to serve the same at the village of the appellant, i.e., Khatta, U.P. He tried to locate the accused appellant at various locations, without any success. The warrant which is available on record clearly bears the address of the accused appellant as Khatta, Prahladpur, Bagpat, U.P.
25. Even proceedings of proclamation and attachment were undertaken under Sections 82 and 83 CrPC but to no avail because the accused

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appellant had vanished after the crime and was not traceable at the crime scene or at his known address i.e. village Khatta, U.P. The fact regarding his abscondence was also published. Accordingly, a charge sheet came to be filed under Section 299 CrPC showing the accused appellant to be an absconder.

26. The trial Court passed an order dated 18<sup>th</sup> March, 1991 declaring the accused appellant to be an absconder and permission was granted to the prosecution to proceed with the trial by resorting to the procedure under Section 299 CrPC. This order was never questioned before any court of law.
27. The trial Judge recorded the statement of Ashok Kumar Pathak, the complainant as PW-1 under Section 299 CrPC on 17<sup>th</sup> July, 1991 after administering oath to him which begins in the following manner: -
 

“Shri Ashok Kumar Pathak, s/o Shri Ram Puran aged 28 years, R/O Kartar Nagar, Gali No. 14, Delhi on S.A. (sworn affirmation)”
28. This statement bears the signature of the presiding officer of the Court and so also of the complainant Ashok Kumar Pathak. Three more witnesses, namely, Head Constables Mohan Lal and Surender Kumar and Inspector Bal Kishan were also examined on oath in proceedings under Section 299 CrPC.
29. In this background, the fervent submission of the learned counsel for the appellant that the prosecution only exhibited the statement of complainant Ashok Kumar Pathak recorded under Section 161 CrPC and that he was never examined on oath in proceedings under Section 299 CrPC seems to have been made out of sheer ignorance and without ascertaining the correct position from the original record.
30. Section 299 of CrPC expressly provides for the power of the Court to record evidence in absence of the accused in the following term: -

**“299. Record of evidence in absence of accused.— (1)**  
 If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the court competent to try or commit for trial, such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in

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evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the First Class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.”

31. Sub-section (1) of Section 299 CrPC is in two parts, the first part provides for proof of jurisdictional fact in respect of abscondence of an accused person and the second that there was no immediate prospect of arresting him. In the event, an order under the said provision is passed, deposition of any witness taken in the absence of an accused may be used against him if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without any amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.
32. This Court in the case of [\*Nirmal Singh v. State of Haryana\*](#)<sup>1</sup> while considering the issue that under what circumstances and by what method, the statement of a witness under Section 299 of CrPC could have been tendered in the case for being admissible under Section 33 of the Indian Evidence Act, 1872 and whether they can form the basis of conviction, held as follows:

**“4. ....Section 299 of the Code of Criminal Procedure consists of two parts. The first part speaks of the circumstances under which witnesses produced by**

1 [\[2000\] 2 SCR 807](#) : (2000) 4 SCC 41

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**the prosecution could be examined in the absence of the accused and the second part speaks of the circumstances when such deposition can be given in evidence against the accused in any inquiry or trial for the offence with which he is charged.** This procedure contemplated under Section 299 of the Code of Criminal Procedure is thus an exception to the principle embodied in Section 33 of the Evidence Act inasmuch as under Section 33, the evidence of a witness, which a party has no right or opportunity to cross-examine is not legally admissible. Being an exception, it is necessary, therefore, that all the conditions prescribed, must be strictly complied with. In other words, before recording the statement of the witnesses produced by the prosecution, the court must be satisfied that the accused has absconded or that there is no immediate prospect of arresting him, as provided under the first part of Section 299 (1) of the Code of Criminal Procedure....

.....There possibly cannot be any dispute with the proposition of law that for taking the benefits of Section 299 of the Code of Criminal Procedure, the conditions precedent therein must be duly established and the prosecution, which proposes to utilise the said statement as evidence in trial, must, therefore, prove about the existence of the preconditions before tendering the evidence.....

**....On a mere perusal of Section 299 of the Code of Criminal Procedure as well as Section 33 of the Evidence Act, we have no hesitation to come to the conclusion that the preconditions in both the sections must be established by the prosecution and it is only then, the statements of witnesses recorded under Section 299 CrPC before the arrest of the accused can be utilised in evidence in trial after the arrest of such accused only if the persons are dead or would not be available or any other condition enumerated in the second part of Section 299 (1) of the Code of Criminal Procedure is established....”**

**(emphasis supplied)**

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33. Further, in the case of Jayendra Vishnu Thakur v. State of Maharashtra & Another<sup>2</sup> it was held as follows: -

**“25. It is also beyond any cavil that the provisions of Section 299 of the Code must receive strict interpretation, and, thus, scrupulous compliance therewith is imperative in character.** It is a well-known principle of interpretation of statute that any word defined in the statutory provision should ordinarily be given the same meaning while construing the other provisions thereof where the same term has been used. Under Section 3 of the Evidence Act like any other fact, the prosecution must prove by leading evidence and a definite categorical finding must be arrived at by the court in regard to the fact required to be proved by a statute. Existence of an evidence is not enough but application of mind by the court thereupon as also the analysis of the materials and/or appreciation thereof for the purpose of placing reliance upon that part of the evidence is imperative in character.

**29. Indisputably both the conditions contained in the first part of Section 299 of the Code must be read conjunctively and not disjunctively. Satisfaction of one of the requirements should not be sufficient....”**

**(emphasis supplied)**

34. The statement of Ashok Kumar Pathak dated 17<sup>th</sup> July, 1991 recorded in proceedings under Section 299 CrPC is as follows: -

“I am working as Salesman/supply man in the M/s R.P. Associates a shop of medicines in Bhagirath Place for the last about seven years. In my neighbourhood accused Sukhpal along with his wife Usha and children used to reside in H.No.387 Gali No.14 Kartar Nagar for the last 3/4 years prior to this case. He was having two daughters and one son. Later on he also joined service in M/s R.P. Associates, Bhagirath Place with my assistance. Accused suspected infidelity of his wife Smt. Usha and for this reason they were not having good relations and

2 [2009] 8 SCR 591 : (2009) 7 SCC 104

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they always used to quarrel with each other. Prior to the occurrence of this case accused left his house leaving his wife Smt. Usha and three children at the above said house for his village Khatta in UP and used to come to his shop therefrom. Sometimes they used to visit with his wife Usha at his house. About four days back prior to this occurrence accused Sukhpal had come to his house where sister of Usha was also found present with Usha at his house and on that day Sukhpal had quarrelled with his wife Usha and he then returned. Next day sister of Usha also left with three children of Usha to her house, leaving her sister alone at her house.

On 19.5.1990 at about 10.30 P.M. I saw accused Usha & Sukhpal who came on a cycle to his house having conversation with his wife, sitting on a cot in the court-yard of his house, and I went on the roof of my house, and slept. In the night when the rain was started I came down from the roof and I saw the accused Sukhpal along with his wife Usha going into inside their room. Both of them went inside their room. Next morning due to holiday (closed day being Sunday) I woke up some late and started my daily routine work. I found the cycle of Sukhpal parked in the court-yard of his house. I thought that both of them might be in their room. In the noon I again found the cycle of Sukhpal parked in the court-yard of the house but none of them was seen outside their room. In the evening at about 5.30 P.M. when I called them but no response came from his house but the door of the room was opened. When I entered the room of Usha I found Smt. Usha dead lying on the cot and accused Sukhpal was found missing therefrom. I informed the nearby residents who called the police. Accused Sukhpal had run away from his house after committing the murder of his wife Usha in the night. Police came there and completed the proceedings. I gave my statement to the police and I signed my statement which is Ex.PW-1/A and is correct. Other mohalla people also collected there.

There were many injuries on the throat and shoulder, neck of Smt. Usha. There was blood on the bed sheet on which medicines were found scattered and letter written



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in Hindi by accused Sukhpal regarding the murder of his wife Usha was also found under the cot.

I identify the hand-writing of Sukhpal on that letter, because he was working with me at the aforesaid medicine shop where we used to prepare and write the documents. I have seen him signing and writing the documents at the above said shop with me. Police seized that letter vide a memo Ex.PW1/B and I signed the same.

One old cycle make Avon of accused Sukhpal was seized vide a memo which is Ex.PW1/D. I signed the same. I had seen the accused using that cycle earlier also and so I identify this case to be of accused Sukhpal. Surinder Kumar who was also present there also signed the memo.

On 22.5.1990 I was present on my duty at the shop of M/s R.P. Associates, 1696/8 1st floor Mohan Building Bhagirath Place where accused Sukhpal also used to work. On that day police officials visited the shop where Sanjiv Kumar, owner of the above said shop reduced two letters to the police. One letter was an application for resignation from the service written by Sukhpal to M/s R.P. Associates and another letter at 12.6.89 addressed to R.P. Associates requesting for service to him. Both these letters were written and signed by accused Sukhpal. I identify his writing and signature on it. These letters are Ext.PW/E and Ex.PW/F. These letters were seized vide memo Ex.PW1/G and I signed it. The letter addressed to the police officer written by Sukhpal which was seized from the spot by the police is Ex.P1. which was taken into possession vide memo Ex.PW1/B. Sanjiv Jain owner of the above said shop produced one page of the letter pad to the police who seized the same vide memo Ex.PW1/H and I signed the same.”

35. The statement of Ashok Kumar Pathak (reproduced *supra*) gives positive and unwavering proof of the following circumstances: -

- (i) The accused appellant Sukhpal was married to Usha (deceased).
- (ii) There was an ongoing marital strife between the spouses owing to the suspected infidelity of Usha and on this ground, they

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used to quarrel with each other. The accused appellant left his wife Usha and his three children and started living in village Khatta, U.P. The accused suspected infidelity of Usha imputes a strong motive to the accused for her murder.

- (iii) Ashok Kumar Pathak had facilitated a job for the accused appellant in M/s. R.P. Associates.
  - (iv) In spite of the strife and acrimonious relationship, the accused appellant often used to visit his wife Usha and would stay with her. He had come and stayed with Usha four days before the incident and at that time, Sudha, sister of Usha was also present. Sukhpal quarrelled with Usha in presence of her sister and then went away.
  - (v) A day prior to the incident also, accused appellant had come to House No. J-387, Gali No. 4, Kartar Nagar, Delhi where the alleged incident took place and stayed with Usha.
  - (vi) The witness Ashok Kumar Pathak saw the accused appellant parking his cycle in the courtyard of the house. He also saw the accused appellant (Sukhpal) and wife (Usha) talking to each other while sitting on a cot in the courtyard. Then it started raining whereupon, both were seen going into the house from the courtyard. On the next morning, neither the accused appellant nor Usha were anywhere to be seen.
  - (vii) The witness went to Usha's house in the evening and saw her dead body lying on cot with large number of injuries whereas the accused appellant was missing. The cycle of the accused appellant was still parked in the courtyard of the house.
  - (viii) A handwritten note (Exhibit PW-12/E) confessing to the murder was found lying underneath the cot on which the dead body was lying. The witness categorically stated that this note was written in the handwriting of the accused appellant which the witness was able to identify on account of both having worked together in the same concern (M/s. R.P. Associates) for a significant period of time.
36. Thus, the circumstances of motive, last seen, confession and abscondence from the crime scene after committing the crime are all spoken to by the witness Ashok Kumar Pathak (PW-1) in his statement dated 17<sup>th</sup> July, 1991 (reproduced *supra*) recorded on sworn

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affirmation during the proceedings under Section 299 CrPC. It may be stated here that Ashok Kumar Pathak had no motive whatsoever to falsely implicate the accused appellant for the murder of Usha.

37. The fact regarding Usha's homicidal death is not in dispute. The Medical Jurist (PW-15) gave categorical testimony to the effect that Usha had been manually strangled and the cause of death was Asphyxia. Thus, we need not discuss the medical evidence in detail.
38. The statement of Ashok Kumar Pathak by itself provides a complete chain of circumstantial evidence sufficient to establish the guilt of the accused appellant. The accused appellant vanished from the crime scene and remained absconding for a period of nearly 10 years. He could be apprehended on 9<sup>th</sup> August, 2000, whereafter, regular trial was conducted. During the period of abscondence of the accused appellant, the complainant Ashok Kumar Pathak seems to have left his house at Kartar Nagar, Delhi where he used to reside earlier. Despite ample efforts being made by the Investigating Agency to summon and examine Ashok Kumar Pathak, he could not be traced out and produced in the witness box for deposition during trial after the accused had been arrested.
39. Viewed in light of the provisions of Section 299 CrPC read with Section 33 of the Indian Evidence Act, 1872 as interpreted by this Court in the case of *Nirmal Singh* (*supra*) and *Jayendra Vishnu Thakur* (*supra*), the trial Court was justified in holding that the statement of Ashok Kumar Pathak recorded in these proceedings was fit to be read as a piece of substantive evidence. We concur with the findings recorded by the trial Court and affirmed by the High Court on this vital aspect of the matter.
40. Sudha (PW-10), sister of deceased Usha also stated that the accused appellant used to quarrel with his wife Usha suspecting her infidelity. The witness also stated that the accused appellant had come to the house of Usha in her presence about four days before the incident and went away after fighting with Usha. Thus, evidence of this witness also establishes the motive attributed to the accused appellant for commission of the murder. Her testimony is also sufficient to conclude that inspite of the acrimonious relations between the husband and wife, the accused appellant used to visit Usha frequently from the village Khatta, U.P. where he was residing after having abandoned his wife and children.

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41. The witness Sanjiv Jain (PW-8), employer of accused appellant gave evidence to the effect that the Investigating Officer (PW-13) collected the admitted writings of the accused (Exhibit PW-12/C and Exhibit PW-12/D) from him during the course of the investigation. Sanjiv Jain (PW-8) had no motive whatsoever so as to falsely implicate the accused in this case. He had provided employment to the accused which fact is not disputed. The version of Sanjiv Jain (PW-8) to the effect that the Investigating Officer (PW-13) collected the scripts/ documents written by the accused while working in his establishment finds corroboration from the statement of Ashok Kumar Pathak recorded in the proceedings under Section 299 CrPC.
42. The contention of learned counsel for the appellant that the two persons namely, Sandeep Kumar and Rajbir Singh (PW-14) were involved in an illicit affair with Usha and they might have murdered the lady has no legs to stand because in view of what has been stated by Ashok Kumar Pathak in his testimony recorded under Section 299 CrPC, it is clear that no one other than the accused appellant was present in the house with Usha on the night she was murdered.
43. The Investigating Officer (PW-13) duly proved the process of arrest of accused on 9<sup>th</sup> August, 2000, i.e., after more than 10 years of the incident.
44. The specimen writings (Exhibits PW-5/D, 5/E and 5/F) of the accused appellant were lawfully collected by the Investigating Officer (PW-13) after he was arrested and all these documents were placed on record with the charge sheet. These specimen writings (Exhibits PW-5/D, 5/E and 5/F) and the admitted writings (Exhibits PW-12/C and PW-12/D) of the accused appellant along with confession note (Exhibit PW-12/E) recovered from the crime scene were sent to the handwriting expert (PW-24) for comparison from where a report (Exhibit PW-12/F) was received to the effect that the handwritings on these documents match with each other. As is required under law, the handwriting expert Deepa Verma was examined as a witness (PW-24) and she proved the report (Exhibit PW-12/F) establishing the fact that the handwriting on the confessional note (Exhibit PW-12/E) recovered from the crime scene matched with the handwriting of the accused appellant on the specimen and admitted writings.
45. The Investigating Officer (PW-13) gave unimpeachable evidence proving the various steps taken by him for collection of evidence

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during investigation so as to link the accused appellant with murder of Usha. The fact that the accused appellant was present with Usha on the night preceding the murder is firmly established from the deposition of Ashok Kumar Pathak. He went absconding after the murder and could not be traced out for almost 10 years which is also a strong circumstance pointing towards his guilty state of mind.

46. The circumstances leading to murder of Usha were in the exclusive knowledge of the appellant. He has offered no explanation as to the manner in which Usha was strangled to death within the confines of the room where only he and the deceased were present. The bald plea of denial offered by the accused by way of an explanation to this gravely incriminating circumstance is not sufficient to absolve him of the burden cast upon him by virtue of Section 106 of the Indian Evidence Act, 1872.
47. As a consequence of the above discussion, we are of the firm view that the prosecution has established the following links in the chain of incriminating circumstantial evidence: -
  - (i) Motive;
  - (ii) Last seen together;
  - (iii) Medical evidence establishing that the cause of death of the deceased was homicidal.
  - (iv) Confessional note;
  - (v) Abscondence for nearly 10 years;
  - (vi) Wrong explanation given by the accused in his statement under Section 313 CrPC;
  - (vii) Failure of the accused to offer explanation for the homicidal death of his wife in the night time when only the accused and deceased were present in the house leading to the interference of guilt by virtue of Section 106 of the Indian Evidence Act, 1872.
48. Connected together, all these facts form a clinching and complete chain of incriminating circumstances pointing exclusively towards the guilt of the accused appellant and totally inconsistent with his innocence or the involvement of any other person in the crime.
49. Consequently, we have no hesitation in confirming the view taken by the trial Court and the High Court in convicting and affirming the

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conviction of the accused appellant for the charge of committing murder of Usha.

50. The impugned judgments do not suffer from any infirmity warranting any interference.
51. Hence, the appeal fails and is hereby dismissed as such.
52. The appellant is on bail. His bail bonds are cancelled. He shall surrender before the trial Court within the next 60 days to serve the remainder of the sentence. In case the appellant fails to surrender before the trial Court within the aforesaid period, the trial Court shall take steps to apprehend him and make him serve out the sentence.
53. Pending application (s), if any, shall stand disposed of.

*Headnotes prepared by: Divya Pandey*

*Result of the case:*  
Appeal dismissed.