

N. Dev Dass Singha Vs. State

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Court : Delhi

Decided On : Sep-20-2013

Judge : G. S. Sistani

Appellant : N. Dev Dass Singha

Respondent : State

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A.NO.647/2010
Judgment reserved on 13th August, 2013. Judgment delivered on 20th September, 2013. % % N. DEV DASS SINGHA Through : Appellant Mr.Anish Dhingra, Adv. versus STATE Through : Respondent Ms.Richa Kapoor, Adv.
CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HONBLE MR. JUSTICE G.P. MITTAL G.S. SISTANI, J.

1. Challenge in this appeal, filed under Section 374(2) of the Criminal Procedure Code, is to the judgment dated 02.3.2010 and the order on sentence dated 06.03.2010 whereby the appellant has been sentenced to imprisonment for life for the offence punishable under Section 302 IPC.

2. The case of the prosecution, as noticed by the trial court, is as under:

On 11/08/2004 on receipt on (sic of) DD No.15, the investigating officer received a telephonic information at Police Post Jungpura. ASI Ram Lal to whom the DD No.15 was given, along with Ct. Arun Kumar went to the spot. Ct. Ghanshyam and

SI Sanjiv Kumar also went to the spot. At the spot blood was found spread on the floor and one knife, used for vegetable cutting, the blade of which was broken, was also lying there. One blood stained Dupatta with blood and one folding bed having blood stained sheet and the handle of the knife were also found there. On inquiry it came to their knowledge that one person Dilip who is brother of Devdass, thereafter had taken the injured to the hospital. SI Ram Lal left Ct. Arun Kumar at the spot for his safeguard and went to AIIMS Hospital where he received MLC of injured Nilima. No eye witness was found at the spot. Doctor gave opinion that the injured was unfit for statement. ASI Ram Lal returned to the spot and recorded statement of one Maina Devi who has stated that she was employed in AIIMS Hospital and on that day, i.e., 11/08/2004 at about 1.30 AM she was sitting in her room and heard noise of 'Dham Dham' from the upper room belonging to her brother in law (devar) Ramesh. Nilima used to live in that room along with her husband and children and in another room some boys from the village of her husband used to live. After hearing noise she came. She went up stair and saw the door was closed. She thought that it might be a quarrel between husband and wife so she came back. Again she heard the noise of Dham Dham and went upstairs again, the door was closed. She knocked at the door and accused Devdass who used to live in the room above her room came outside from the said room and there was blood on his baniyan. He has stated that Nilima got injured. On being asked why there was blood on his baniyan?. He pushed and ran down. Then she went inside the room and saw Nilima in pool of blood (khoon se lathpath). She raised noise 'pakdo pakdo' at that time. Accused ran away from the place. Nilima told her that she was stabbed by Devdass. Neighbour Rajinder came there who made the telephonic call to the police and brother of accused Devdass. Dilip took Nilima in three wheeler scooter to AIIMS hospital. After recording the statement, ASI Ram Lal made endorsement on the rukka and went to Police Station for registration of the case on the basis of which the FIR under Section 307 IPC was registered. The Crime Team was called at the spot by the Investigating Officer. Site plan was prepared. The incriminating articles were seized from the spot. The victim Nilima died in the hospital then the FIR was converted under Section 302 IPC. The postmortem of the dead body of the victim was got done and victim was handed over to her relatives. The accused was arrested. The

postmortem report of the victim was conducted during investigation. The scaled site plan was got prepared by draftsman and on completion of the investigation, the challan against the accused was prepared which was filed in the court, as referred before. Prima facie case for the offence under Section 302 IPC was found made out against the accused so the charge was framed accordingly against him on 26/05/2005 to which he pleaded not guilty and claimed trial.

3. In support of its case, the prosecution has examined 19 witnesses. Counsel for the appellant submits that the judgment on conviction and the order on sentence passed by learned trial court is bad in law, it is based on conjectures and surmises and mere probabilities and is thus not sustainable in the eyes of law. It is also the case of the appellant that the facts and the evidence placed on record do not conclusively prove the guilt of the appellant; there are no eye witnesses to the case; and on the basis of broken chain of circumstantial evidence a conviction cannot be formed.

4. Counsel further submits that the trial court has failed to appreciate that the evidence of PW-1 is not reliable, as there are material improvements in her evidence. It is contended that PW-1 had not stated to the police that when she went up-stairs, the door of the stairs of the room was half open and half closed and on seeing her, the appellant closed the door; she had also not stated that the appellant came out of the room and he was soaked in blood and blood was present on his hands and he was wearing a jeans pant. Another improvement pointed out is that she had asked the appellant tune khoon kar rakha hai. It is thus contended that the entire story of PW-1 is concocted with an intention to implicate the appellant in the present case. Counsel also submits that PW-1 has failed to attribute any motive for the act committed by the appellant.

5. Mr.Dhingra, also contends that the trial court has failed to appreciate that PW-8 has clearly improved his version to implicate the appellant to prove the dying declaration of the deceased. It is contended that PW-8 did not state before the Police that the deceased had told him uncle mujhe bacha lo, Devdass ne mujhe chaku se mara but has subsequently stated the same before the court with an intention to bring home the guilt of the appellant.

6. Elaborating his argument further, counsel for the appellant submits that the dying declaration is not reliable as the witness had not stated the same before the police, when he had the first opportunity to state the truth and secondly, the trial court has failed to put the alleged evidence of dying declaration before the accused in his statement under section 313 of Cr.P.C. Counsel also submits that it is a well settled principle of law that anything incriminating the accused if not put to the accused in his statement under section 313 of Cr.P.C. the same cannot be read into evidence against him.

7. Mr.Dhingra, counsel for the appellant also submits that the trial court has totally lost sight of the fact that the appellant was not a permanent resident of the place where the incident took place, and had come to the place of incident only a few days before the date of the incident, and thus, he had no motive to kill the deceased.

8. Counsel further submits that the evidence of PW-13 is also not reliable wherein he has stated that appellant used to tease the deceased and a few days before the incident also the appellant had teased her and the appellant had been cautioned by the husband of the deceased and the brother of the appellant was also informed regarding the same.

9. It is also the case of the appellant that there is no eye witness to the murder and the prosecution has not been able to complete the chain of circumstantial evidence to prove the guilt of the appellant.

10. Counsel for the State on the other hand submits that all the circumstances point towards the guilt of the appellant and the appellant has been rightly convicted under Section 302 IPC. Ms.Kapoor submits that the prosecution has been able to establish their case based on the evidence of PW-1 that the appellant was last seen coming out of the door of the room in which the dead body of the deceased was found and he was running away from the spot soaked in blood. It is submitted that PW-1 had also seen blood on the baniyan and hands of the appellant. She had enquired and confronted the appellant by saying tune khoon kar rakha hai and on this the appellant had stated current lag gaya, current lag gaya.

11. As far as the motive is concerned, counsel for the State submits that the motive for committing the crime also stands duly established by the evidence of PW-13. In addition thereto it is contended that the dying declaration of the victim to PW-8 leaves no room for doubt that the appellant had murdered the victim on the fateful day and thereafter he ran away from the spot. Moreover, it is established that the deceased was subjected to sexual assault, just prior to murder and as per the FSL semen was found in the vaginal swab slide of the deceased, which reinforces the motive of the appellant.

12. We have heard counsel for the parties and carefully examined the evidence and given our thoughtful consideration to the matter. The argument of counsel for the appellant can be summarized as under: (i) Improvements in the testimony of PW-1 and PW-10 (ii) The prosecution has failed to establish any motive against the appellant. (iii) The prosecution has been unable to complete the chain of circumstantial evidence to prove the guilt of the appellant. (iv) Reliance cannot be placed on the dying declaration made before PW-8, as PW-8 had not stated so before the Police and further the alleged evidence of dying declaration was not put before the accused in the 313 statement.

13. The arguments of Ms. Richa Kapoor, counsel for the State can be summarized as under: (i) The prosecution has been able to establish that the appellant was last seen in the company of the deceased. (ii) The dying declaration is reliable. (iii) There are no material improvements in the testimonies of PW-1 and PW-10. (iv) Evidence of PW-13 clearly establishes the motive of killing the deceased.

14. We have heard counsel for the parties and carefully examined the evidence placed on the record. It has been contended before us that the prosecution cannot rely on the dying declaration for two reasons: firstly the same did not find mention in the statement made before the police and secondly the dying declaration was not put to the appellant while recording his statement under Section 313 of the Cr.P.C. Section 313 of the Cr.P.C. reads as under:

313. Power to examine the accused. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court(a) may at any stage, without previously warning

the accused, put such questions to him as the Court considers necessary; (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b). (2) No oath shall be administered to the accused when he is examined under subsection (1). (3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

15. Section 313 Cr.P.C. empowers the Court to examine an accused after the completion of evidence of the prosecution. It has repeatedly been held that this act of examining the accused should not be treated as an empty formality. An accused must be granted an opportunity of explaining any circumstance which may incriminate him with a view to grant him an opportunity of explaining the said circumstance that may appear against him in evidence.

16. We have examined the statement of the appellant recorded under Section 313 of the Cr.P.C. and find that there is force in the submission made by learned counsel for the appellant in this regard. We may add that this is a defect, which is curable.

17. In the case of Janak Yadav and Others v. State of Bihar, reported at (1999) 9 Supreme Court Cases 125 the Supreme Court has observed that where no examination under Section 313 Cr.P.C. was conducted by the trial court in such a situation it was open for the High Court to have examined the accused, whose statement under Section 313 Cr.P.C. had not been recorded, itself under Section 313 Cr.P.C. and then proceed with the hearing of the appeal or direct retrial. Para 5 of the judgment reads as under:

5. CRL.A.647/2010 Section 313 Cr PC prescribes a procedural safeguard for an accused facing the trial to be granted an opportunity to explain the facts and circumstances appearing against him in the prosecutions evidence. That

opportunity is a valuable one and cannot be ignored. It is not a case of defective examination under Section 313 Cr PC where the question of prejudice may be examined but a case of no examination at all under Section 313 Cr PC and as such the question whether or not the appellants have been prejudiced on account of that omission is really of no relevance. It was open to the High Court to have either examined the accused, whose statements under Section 313 Cr PC had not been recorded, itself under Section 313 Cr PC and then proceeded with the hearing of the appeal or directed retrial of the case confined to the stage of recording of the statements of the appellants under Section 313 Cr PC but it was not justified to order the retrial of the entire case by framing de novo charges and examining afresh prosecution evidence. The direction of the High Court to that extent cannot be sustained.

18. Accordingly, during the course of hearing of this appeal, by an order dated 1.8.2013 we had directed the appellant to remain present in Court to enable this court to record the supplementary statement of the appellant under Section 313 of the Cr.P.C, which was recorded on 7.8.2013. The supplementary statement of the appellant reads as under:

07.08.2013 CRL.A.647/2010 Supplementary statement of the appellant, N Dev Dass Singha, under Section 313 of the Code of Criminal Procedure. Question : This is an evidence against you that when the victim, Neelima, was taken to the hospital in a three wheeler scooter she told PW-8, to save her as Devdass had stabbed her with a knife. She said Uncle mujhe bacha lo, Devdass ne mujhe chaku se mara. The victim was repeatedly telling Dilip, brother of the appellant, that she was stabbed by Devdass. Answer: I do not know as I was not present there. R.O.A.C.

19. On 7.8.2013 the appellant was also asked if he had anything further to state or lead any evidence. Order dated 7.8.2013 is extracted below:

Pursuant to the directions passed by this Court on 1.8.2013 and 5.8.2013, the appellant, N Dev Dass Singha, has been produced in Court in custody, and his supplementary statement under Section 313 of the Cr.P.C. has been recorded separately. The appellant submits that he does not have to say anything further

and does not wish to lead any defence evidence.

20. Having regard to the supplementary statement of the appellant recorded by this court on 7.8.2013, the first objection with regard to placing reliance on the dying declaration cannot be pressed. We may clarify at this stage that initially counsel for the appellant had argued before us that the dying declaration made before PW-8, Ashwa Ghosh cannot be relied upon as the same is a material improvement, as the said fact was not stated by PW-8 in the statement recorded before the Police. It has rightly been observed by the trial court and also pointed out by counsel for the appellant that PW-8 had stated in his statement under Section 161 Cr.P.C. that while they were taking the victim in the three wheeler scooter to the AIIMS hospital, the said lady stated by crying that she was stabbed with a knife by Devdass (Devdass ne usey chakuon se mara hai).

21. At this stage it would be useful to reproduce the evidence of PW-8:

PW 8 Ashwa Ghosh s/o Late Lekh Ram aged 42 years Car Mechanic r/o 5A, Summon Bazar, Bhogal, New Delhi. On SA On 11/8/04 I was present at my house at about 11.30 or 12 noon and was watching TV. My wife came to me and told me that some incident had taken place on the ground. One Dilip Kumar used to reside on the second floor in H.No.10, Summon Bazar. When I came downstairs I saw Dilip present there having the head of his Bhabhi in his lap. His bhabhi was bleeding profusely. One boy brought a three wheeler scooter. The injured was put in the three Wheeler scooter. Name of the injured was Neelima. She was telling me to save her and Devdass had stabbed her with a knife. (uncle mujhe bacha lo, Devdass ne mujhe chaku se mara). She was repeatedly telling Dilip that she was stabbed by Devdass. We removed Neelima to AIIMS. Doctors asked us to donate blood. I and Dilip both agreed to donate blood. She however expired. Devdass the accused is now present before the court today and I identify him. XXXXXX By Sh.K.K. Manan counsel for the accused. Police had recorded my statement on the day of incident. The incident had taken place on 11/8/04. Police had recorded my statement on 11/8/04 and 12/8/04. (Ld. Addl.PP states that there is no statement of the witness for 11/8/04). Police had called me on 11/8/04 and 12/8/04. I had stated to police in my statement that when I came downstairs I saw Dilip having

head of his bhabhi in his lap and his bhabhi was bleeding profusely. Confronted with statement Ex.PW-D/A where it is not so recorded. However, it finds mention that Dilip has caught hold his bhabhi in injured condition. I had stated to police in my statement that Neelima had asked me to save her. Confronted with statement Ex.PW8/DA where it is not so recorded. I had stated to police in my statement that Neelima was repeatedly telling Dilip that she was stabbed by Devdass. Confronted with statement Ex.PW8/DA where it is not so recorded. I had stated to police in my statement that the doctor had asked us to donate blood and we both had agreed and the deceased however expired. Confronted with statement Ex PW8/DA where it is not so recorded. I had stated to police in my statement that accused Devdas was known to me prior to the incident. Confronted with statement Ex.PW8/DA where it is not so recorded. I had not stated to police in my statement that where accused Ddvdas used to reside. Vol Police did not inquire from me about this fact. I did note down the No.of the TSR. I did not note down the name and address of TSR driver. I had not told the doctor who medically examined the deceased my name and address. Vol. The doctor had not asked from me. I did not disclose anyone at the hospital that I had brought the injured with Dilip at the hospital. Deceased was alive when she was got admitted at the hospital. She was talking at that time. It is incorrect to suggest that I did not remove the injured to hospital or that injured did not disclose anything regarding the person who cause injuries to her or that I have given false statement or that for that reason my statement was not recorded on 11/8/04 or that I was introduced as a false witness on the next day.

22. We find that PW-8 is a natural witness, who was present at his home on 11.8.2004. He has deposed that he was watching television and he was informed by his wife that some incident had taken place at the ground floor. He saw the victim bleeding profusely and she was put in a three wheeler scooter and taken to the hospital. This witness has categorically deposed that Nilima told him to save her as Devdass had stabbed her with a knife. She said Uncle mujhe bacha lo, Devdass ne mujhe chaku se mara. We find the evidence of this witness had remained unshaken during cross-examination, however, certain discrepancies have been pointed out but the same are not material which are evident on mere reading of the cross-examination. The evidence of this witness is reliable and

trustworthy and thus the submission made by counsel for the appellant that the prosecution cannot place reliance on the dying declaration, is without any force. The statement is admissible as a dying declaration within the meaning of section 32 of the Indian Evidence Act.

23. We may also notice that the complainant, Maina Devi, PW-1 in her statement, Exhibit PW-1/A, made to the investigating officer, which led to the lodging of the FIR, had clearly stated that the victim had informed her that Devdass had inflicted knife injuries on her. This fact was no doubt omitted by PW-1 in her statement made in the court, which was even over-looked by the prosecution.

24. Another submission of counsel for the appellant is that there are material improvements in the testimony of PW-1, thus the evidence is unreliable and cannot be the basis of conviction of the appellant. Counsel for the appellant has pointed out the following improvements made by PW-1 in court while testifying from the version given by her to the Police:

She never stated to the police that she went upstairs the door of the stairs of the room was half open and half closed and on seeing her, the appellant closed the door. She had also not specifically stated anything before the police that appellant came out of the room and he was soaked in blood and blood was there on his hand and he was wearing a jeans pant. She also improved to the aspect that she asked to the appellant that Tune khoon kar rakha Hai.

25. In order to appreciate the contention made by counsel for the appellant and also to enable this court to have a holistic view of the entire statement of the PW-1, we deem it appropriate to extract the entire evidence of PW-1:

PW-1 Smt. Maina Devi w/o.Nank Chand aged 38 years r/o. Summon Bazar, H.No.10, First Floor, Bhogal, Illiterate, working as Aya on compassionate grounds. On SA On 11/8 last year I was in my house. At about 11.30 AM I heard a noise of Dam Dam. I went upstairs. The door of stairs of the room was half open and half closed and on seeing me, Devdas, accused present in court who was there upstairs in the room closed the door. I came back downstairs. After some time I again heard the noise and I went upstairs again. On finding the door closed, I

knocked at the door. Accused came out rushing from the room, gave a strong push to me while running away and while running away, accused was soaked in blood. Blood was there on his banian and hands. He was wearing a jeans pant. I confronted him by saying tune khoon kar rakha hai. He said to me on this current lag gaya, current lag gaya. He went downstairs and tried to escape. I raised noise, on seeing Neelimas condition. Neelima was residing with the accused. When I saw her, she was in a seriously injured condition. There were marks of knife blows on her neck, nose, stomach and hands and she was in a very serious condition. I raised noise and one Rajender, neighbour came for help. He telephoned the police. One Ashok brought a three wheeler and she was taken to the hospital. The brother of accused namely Dilip was also called on telephone and he came and accompanied the deceased to the hospital i.e. AIIMS. I lodged a complaint with the police. The same is Ex.PW1/A which bears my signatures at point A. Police prepared site plan of the place of occurrence at my instance. XXXXXXXXXXXX on behalf of the accused. Deferred as his advocate Sh.K.K. Manan is reported to be in Tis Hazari. XXXXXXXXXXXX by Ld. Cl. Sh.K.K. Manan for the accused. I had stated to the police in my statement that after hearing the noise of Dumdum when I went upstairs the door of the stairs of the room was half open and half closed and on seeing me, Devdas accused present in the court who was there upstairs in the room closed the door. Confronted with Ex.PW-1/A where it has not been mentioned that door of the stairs was half opened and half closed and on seeing me accused Devdas closed the door. I had stated to the police in my statement that when the accused came out of the room he was soaked in blood the blood was there on his hand he was wearing a jeans pant confronted with Ex.PSW 1/A where this has not been specifically mentioned. I had stated to the police in my statement that I confronted the accused by saying Tune Khoon Kar Rakha Hai confronted with Ex.PW-1/A where this has not been mentioned. I had stated to the police in my statement that he said Current Lag Gaya Current Lag Gaya. Confronted with Ex.PW-1/A where it has been mentioned Current Lag Gaya once and not two times. I had stated to the police in my statement that Nilima was residing with the accused and when I saw her she was in serious condition and there were marks of knife blows on her neck, nose, stomach hand and she was in very serious condition. Confronted with Ex.PW-1/A where it has not been

specifically mentioned but it has been mentioned that when PW-1 saw Nilima she was soaked in blood. I had stated to the police in my statement that one Ashok brought a Three Wheeler and Nilima was taken to the hospital. Confronted with Ex.PW-1/A where name of Ashok has not been mentioned but name of Dilip has been mentioned who has taken Nilima in the TSR to the hospital. Police remained at the spot till about 5/6 P.M. in the evening. Police reached the spot at about 11:45 A.M. I was in my house at that time. I was available if police wanted to make any enquiry from me. I had shown the spot of occurrence to the police and articles lying there had been seized in my presence. Police had got 3/4 papers signed from me in my room but I am not educated so I do not know what are the papers. It is correct that I have only signed the rukka and no other documents. I am working in the AIIMS as a Nursing Orderly and my duty hours vary. I live on the first floor. My Devrani is living on the ground floor. My Devers name is Om Prakash and name of my Devrani is Prem. My devrani was present in the house on the day of incident. There is common stairs in the house for all the floors and it starts from the ground ground floor. My Devrani also came out when she heard the noise. It is wrong to suggest that I am deposing falsely being interested witness or that I have never seen Devdas coming out from the house of the deceased. It is further wrong to suggest that I signed the rukka subsequently on the instance of the police or that I was not present there that is why I did not sign any other document.

26. A complete reading of the evidence of PW-1 would show that the evidence of this witness is credible, trustworthy and reliable.

27. The submission that PW-1 had not stated to the Police that when she went upstairs the doors of the stairs of the room was half open and half closed and on seeing her the appellant closed the door, in our view is not a material improvement.

28. In the statement recorded under section 161 Cr.P.C. this witness has stated that when she knocked at the door, Devdass, appellant came out, who had blood on his baniyan and he stated that Nilima has been electrocuted, and when she asked him how there is blood on his baniyan, he pushed her and ran away.

29. It is settled law that every omission cannot be considered a contradiction in law and further discrepancies or omissions must be material, and only material contradictions can entail serious consequences. It has been repeatedly held by the Supreme Court that minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the case of the prosecution cannot be taken as a ground to reject the evidence of the prosecution in its entirety.

30. Reading of the entire evidence would show that the contradictions which are sought to be pointed out are trivial in nature and they are not material contradictions. The Apex Court in the case of *Shyamal Ghosh Vs. State of West Bengal* reported at (2012) 7 SCC 646 has held as under:

46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused. It is true that there is some variation in the timing given by PW 8, PW 1 and PW 19. Similarly, there is some variation in the statement of PW 7, PW 9 and PW 11. Certain variations are also pointed out in the statements of PW 2, PW 4 and PW 6 as to the motive of the accused for commission of the crime. Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

47. xxxx 48. xxxx 49. It is a settled principle of law that the Court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused. xxxxx 68.

69. 70. CRL.A.647/2010 From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for

doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradistinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution. Another settled rule of appreciation of evidence as already indicated is that the court should not draw any conclusion by picking up an isolated portion from the testimony of a witness without adverting to the statement as a whole. Sometimes it may be feasible that admission of a fact or circumstance by the witness is only to clarify his statement or what has been placed on record. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety. In terms of the explanation to Section 162 Cr.P.C. which deals with an omission to state a fact or circumstance in the statement referred to in sub-section (1), such omission may amount to

71.

31. contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether there is any omission which amounts to contradiction in particular context shall be a question of fact. A bare reading of this explanation reveals that if a significant omission is made in a statement of a witness under Section 161 Cr.P.C., the same may amount to contradiction and the question whether it so amounts is a question of fact in each case. (Sunil Kumar Sambhudayal Gupta v. State of Maharashtra [(2010) 13 SCC 657]. and Subhash v. State of Haryana [(2011) 2 SCC 715].. The

basic element which is unambiguously clear from the explanation to Section 162 Cr PC is use of the expression may. To put it aptly, it is not every omission or discrepancy that may amount to material contradiction so as to give the accused any advantage. If the legislative intent was to the contra, then the legislature would have used the expression shall in place of the word may. The word may introduces an element of discretion which has to be exercised by the court of competent jurisdiction in accordance with law. Furthermore, whether such omission, variation or discrepancy is a material contradiction or not is again a question of fact which is to be determined with reference to the facts of a given case. The concept of contradiction in evidence under criminal jurisprudence, thus, cannot be stated in any absolute terms and has to be construed liberally so as to leave desirable discretion with the court to determine whether it is a contradiction or material contradiction which renders the entire evidence of the witness untrustworthy and affects the case of the prosecution materially.

Applying the settled law to the facts of this case, we are of the view that the contradictions so pointed out are not material and thus the argument of the counsel for the appellant is rejected.

32. It is also submitted by counsel for the appellant that the prosecution has failed to establish any motive for killing the deceased by the appellant. This submission of counsel for the appellant is also without any force, in view of the evidence of PW-13, the husband of the deceased, who has deposed that the appellant used to reside in another room of the same building and 10 days prior to the incident the appellant had used unparliamentary language to his wife. The conduct of the appellant was brought to the notice of his elder brother and he was warned not to indulge in such acts. He has also testified that initially appellant remained mum for some days, but thereafter again he started teasing his wife telling that he loved her.

33. While there is no quarrel with the proposition that motive is an essential ingredient of an offence, it is also settled law that where the evidence is clear the question of motive need not be considered by the Court. However, in the facts of the present case we see no reason to disbelieve the testimony of PW-13, which

clearly establishes the motive against the appellant.

34. It has been strongly urged before us that the prosecution has been unable to complete the chain of circumstantial evidence to prove the guilt of the appellant. This submission of counsel for the appellant is also rejected. The appellant was last seen with the victim, which is clearly established by the testimony of PW-1 in her statement before the Court wherein she had testified that on hearing a noise she went upstairs and found the room of the victim closed. She returned back and only hearing noise again forced her to go upstairs again and when she went upstairs again the appellant had come out rushing from the room and he was soaked in blood, which leaves no room for doubt that the appellant was last seen in the company of the deceased and that there was blood too on his clothes. The evidence of PW-1 is corroborated by the evidence of PW-8 and also the evidence of PW-2 Rajinder Singh, who has deposed that on 11.8.2004 between 11:30 and 12 noon he was present at his house. Maina Devi, PW-1 had raised an alarm that Devdass (appellant) after murdering Nilima was running from the spot of the incident. On hearing the noise he went to the second floor and he found that the appellant had run away. He had identified the appellant in court; and when he went to the room, he saw injury marks of knife on Nilima. He described the place of incident as under:

When I went in the room of Neelima, I saw that there were injury marks of knife on her person and she was lying in an injured condition. There was blood on the bed sheet and also on the floor. One broken blade of knife was lying on the floor. I rang up brother of accused Devdas namely Dilip who came there. One more person namely Ashu Ghosh also came there and Neelima was brought downstairs. She was taken in a TSR by Dilip and Ashu Ghosh to AIJMS Hospital. Neelima was having knife injury marks on her nose, stomach and when she was being taken in TSR, I also saw knife injury on her back. Police was also informed by me. Police came to the spot and thereafter, went to hospital. After some time police again came back to the spot. Crime team also came to the spot. SHO, ACP also arrived on the spot. One chunni, knife which was lying on the floor, the bed sheet, the blood lying on the floor were seized by the police. Police carried out the investigation concerning the material objects. The articles were seized and sealed

with the seal of RLB. I had signed the seizure memos of the articles seized by the police. The seizure memo of chunni is Ex.PW-2/A which bears my signature at point A. The seizure memo of bed sheet is Ex.PW-2/B which bears my signatures at point A. The seizure memo of blade of knife is Ex.PW-2/C which bears my signature at point A. Later on handle of the blade of the knife as well as wrapper of the knife, which was brand new, was seized and sealed vide memo Ex.PW-2/D which bear my signatures at point A. The blood stains were taken into possession vide memo Ex.PW-2/E and F which bears my signatures at point A. On 15/8/04, I apprehended accused present in the court from temple road and handed over him to the police. I had also informed the police after apprehending the accused at temple road. Again said : after the arrival of police on the spot, accused was apprehended by me along with police. Police made inquiries from accused and he was arrested in this case. Police got my signatures on arrest memo which is Ex.PW-2/G which bears my signatures at point A. I had signed the personal search memo of accused which is Ex.PW-2/H. Police interrogated the accused and made inquiries from him. can indentify the case property if shown to me.

35. I The evidence of PW-1, PW-2 and PW-8 has proved the case of the prosecution beyond any shadow of doubt. After the appellant was seen at the spot of the incident, he ran from the spot and was arrested only on 15th August, 2004.

36. Absconding by itself may not necessarily lead to a conclusion of guilt [See Matru Vs. State of U.P. AIR 197.SC page 1050]., but having regard to the fact that the appellant was last seen in the company of the victim and his leaving the room with blood stained clothes, coupled with his absconding from the spot of the incident would be another very strong circumstance against the appellant. Both the above circumstances have not been explained by the appellant.

37. Having regard to the evidence placed on record, the dying declaration of the injured to PW-8 and taking into consideration that the PW-1 had last seen the appellant with the injured finding blood on his baniyan and the fact of appellant absconding thereafter and the dying declaration made before PW-8, in our view leaves no room for doubt that the appellant had stabbed Nilima which resulted in her death on the fateful day i.e. 11/08/2004. The appeal is without any merit and

the same is accordingly, dismissed. G.S.SISTANI, J G.P.MITTAL, J th
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