AmruddIn Vs. State

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Court : Delhi

Decided On : Feb-21-2014

Judge : Sunita Gupta

Appellant : Amruddin

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

21. t February, 2014 + CRL.A. 832/2011 AMRUDDIN Through: ..... Appellant Ms. Anu Narula, Advocate versus STATE Through: ..... Respondent Ms. Richa Kapoor, Additional Public Prosecutor % CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HONBLE MS. JUSTICE SUNITA GUPTA

JUDGMENT
: SUNITA GUPTA, J.

1. Appellant Amruddin has been charged under Section 302 IPC for murder of his wife Mst. Rehana by strangulating her with a towel/gamcha. He was convicted by the learned Additional Sessions Judge u/s 302 IPC in Sessions Case No.24/2010 arising out of FIR No.357/2009 registered with PS Kotwali and sentenced to undergo life imprisonment and fine of Rs.10,000/-, in default, to undergo further rigorous imprisonment for two years.

2. The factual scenario emerging from the record of this case is that on 22nd December, 2009 at 10:57 p.m., DD No.39A was lodged at PS Kotwali regarding quarrel in building No.2077, Gali Paranthe Wali/ Gali Pagri Wali, Chandni Chowk, Delhi. The investigation was entrusted to ASI Chatter Pal (PW22) who, along with Head Constable Kishan (PW17), reached the spot. Meanwhile, on receipt of DD No.21 B, Inspector I.K. Jha (PW21) along with the staff also reached the place of occurrence where on one side of the room, dead body of a female was lying on the floor with a towel/gamcha tied around her neck. It is further the case of prosecution that Arif (PW7) aged about 14 years, son of the deceased met the police officials and his statement, Ex.PW7/A was recorded on which endorsement, Ex.PW17/A was made and the same was sent to police station on the basis of which FIR Ex.PW4/B was registered. The crime team was called at the place and the room was inspected. Photographs were taken. Site Plan, Ex.PW2/C was prepared. The dead body was sent for post mortem. The accused was ultimately arrested on 4th January, 2010 on the basis of secret information. As per the opinion of the doctor, Rehana died of asphyxia due to ante mortem ligature strangulation. After completing investigation, charge sheet was submitted against the accused. The accused chose to contest the charge u/s 302 of the Indian Penal Code.

3. In order to substantiate its case, prosecution in all examined 22 witnesses. All the incriminating evidence was put to the accused while recording his statement, u/s 313 Cr.P.C. wherein he admitted that premises No.2077, Gali Paranthe Wali/Gali Pagri Wali, Chandni Chowk, Delhi was under his tenancy. The rest of the case was one of denial simplicitor. He claimed innocence and alleged false implication in the case.

4. The learned Trial Court relied upon 10 incriminating circumstances against the appellant which established his guilt and accordingly the accused was convicted and sentenced as aforesaid. Those 10 incriminating circumstances as detailed in para 24 of the judgment are as follows:(i) the accused was tenant in respect of a room on the third floor where he was imparting knowledge of embroidery to his children PW7 Arif and PW8 Raisuddin and deceased Mst. Rehana used to visit the place now and then; (ii) secondly, the accused was a drunkard and was in the

habit of beating his wife and he was keeping an evil eye on Shabana, the daughter of deceased from first marriage which was probably resented by the deceased and the complaint was lodged with Delhi Commission for Women and the accused was counselled to behave properly; (iii) thirdly, the accused had liquor in the evening and sent PW7 and PW8 to fetch some meals; (iv) the accused was alone with the deceased wife in the room from 8.00 PM till 10:30 PM or so; (v) the accused did not open the door to his children and the neighbour PW1 Sanjay; (vi) there was no possibility of anyone else entering the room and committing the crime; (vii) soon after the body of the deceased was found, he was found missing from the room and finally apprehended on 04.01.2010; (viii) the deceased was found dead with a towel/gamcha (Ex.P1) tied around her neck; (ix) there was no case of sexual assault upon the deceased; (x) the post mortem clearly brings out that deceased was strangulated to death and death was not suicidal.

5. We have heard Ms. Anu Narula, Advocate for the appellant and Ms. Richa Kapoor, learned Additional Public Prosecutor for the State and have perused the record.

6. It was submitted by the learned counsel for the appellant that the case of prosecution primarily rests on the testimony of PW-7 and PW-8 who are the children of the deceased. However, their deposition cannot be relied upon and accepted to nail the accused. They were at vulnerable age and nursing a lot of acrimony, anger and ill feelings towards the appellant. They were tutored by their maternal family. They developed a story of some Imran in consultation with each other. Since improvements made by them are substantial, they fall in the category of unreliable witness as per Section 155 of the Evidence Act. Both these witnesses deposed that the appellant consumed liquor at the place of occurrence, however, no liquor bottle or glasses were recovered or seized during investigation. Prosecution failed to examine material witnesses, viz., Imran or Shabana, the daughter of the deceased. The investigation was also shabby as no inquiry was conducted as to how the salwar of the deceased was wet. Chance Prints were not lifted. Learned Trial Court went wrong in observing that the appellant was absconding and was arrested on 4 th January, 2010 at the instance of a secret informer. In fact, the appellant himself has surrendered in the police station. As per

police officials, when the accused was arrested, at that time he was identified by PW6, Vineet Gupta. However, Vineet Gupta, in his cross- examination, has denied that he identified the accused in Gali Paranthe Wali. It was further submitted that motive to commit crime is not proved. The alleged complaints by the deceased have not been proved in accordance with law. The alleged grievances as scribed in Mark16/X1 and 16/X2 do not match the allegation when she was verbally questioned as revealed from the order sheet dated 15th September, 2009, Ex.PW11/B. In any case, all the disputes were settled and there was no further complaint by the deceased till the date of incident. The alleged complaint is not in the handwriting of the deceased. Rather it is signed by some Samim who has not been examined. Moreover, name of the husband as mentioned in the complaint is some Atiq Ahmed whereas while recording statement of the accused u/s 313 Cr.P.C., he has been asked if his name was Atiq Rahman, to which he replied in affirmative. As such, the prosecution has failed to prove the case against the accused. Alternatively, it was submitted that as per the disclosure statement of the accused, he had discovered his wife in a compromising condition and she was having illicit relationship with someone. Although, the Investigating Agency has failed to conduct investigation on these lines, however, the disclosure statement so far as prosecution is concerned, is inadmissible in evidence. However, the exculpatory portion has to be appreciated in favour of the accused only. Even DD-39A shows that there was a quarrel in the room. It is not the case of prosecution that the appellant was laced with weapon or he came to the room with pre meditation of eliminating his wife or apart from strangulation, there was any other external injuries. As such, Section 302 IPC is not made out and at the most, offence under Section 304 is made out.

7. Reliance was placed on Golla Yelugu Govindu vs. State of Andhra Pradesh, (2008) 16 SCC769 Madaiah vs. State by Yelandur Police, 1992 Crl.LJ502 In Re: Mottai Thevar, AIR1952 Mad 586 and Randhir Singh vs. The State, 1980 Cr.LJ1397 8. Rebutting the submission of learned counsel for the appellant, learned Additional Public Prosecutor for the State submitted that the deceased was last seen with the accused in the room and it was proved that the accused was the only person with the deceased in the room. Same was deposed by PW7 Arif and PW8 Raisuddin, sons of deceased which find corroboration from an

independent witness, namely, Sanjay, PW1. The FIR was registered at the earliest available opportunity when there was no scope for any fabrication or manipulation. All the minute details were given at the time of lodging the FIR which gives an assurance regarding the truth of its version. The mere fact that PW7 and PW8 were child witnesses is not sufficient to discard their testimony as they were subjected to gruelling cross examination but nothing could be elicited to discredit their testimony. Moreover, the presence of the witnesses was quite natural in the facts and circumstances of case. The accused had a motive to kill the deceased which stands proved from the previous history of cruelty committed by the accused towards the deceased which is substantiated by the complaint and proceedings held before Delhi Commission for Women. The conduct of the accused in fleeing from the place of incidence and avoiding his arrest is another incriminating piece of evidence. It was further submitted that the disclosure statement made to the police by the accused was inadmissible in evidence in view of Section 25 of the Evidence Act and since no recovery was effected in pursuance to the same, it was inadmissible for all practical purposes. The appellant cannot take shelter of the said disclosure statement. It was submitted that the impugned order does not suffer from any infirmity which calls for interference. As such, the appeal is liable to be dismissed.

9. Reliance was placed on Kishan Singh (D) through LRs vs. Gurpal Singh and Ors., 2010(8) SCC775 Trimukh Morati Kirkan vs. State of Maharashtra, (2006) 10 SCC681 Ujjagar Singh vs. State of Punjab, (2007) 13 SCC90 Anthony DSouza and Ors. vs. State of Karnataka, (2003) 1 SCC259 Lakhan Singh @ Pappu vs. The State of NCT of Delhi, MANU/DE/3606/2011; Arvind @ Chootu vs. State, ILR (2009) Suppl. Delhi 704.

10. We have given our anxious thoughts to the respective submissions of the learned counsel for the parties and have perused the record.

11. Before dealing with the rival contentions of learned counsel for the parties, it will be in fitness of things to have a glance at the material evidence led by prosecution.

12. PW-1 Sanjay was residing as a tenant along with his brother at 3rd Floor, Jayantilal Building, Gali Paranthe Wali, Chandni Chowk, Delhi where the appellant along with his two sons were also residing as a tenant and doing the work of embroidery. This witness has deposed that on 22nd December, 2009, he returned back from his duty at about 10:00 p.m. and found both the sons of the accused Amruddin present in his room watching TV. He started taking his meal in the room. Both the children left and knocked at the door of their room. They were having a small baby who was also crying. Despite repeated knocking at the door, accused did not open the same. On hearing the noise, he went to the said room and called upon accused Amruddin to open the door but he replied that he would open the same after some time. Thereafter, he returned back to his room. In the meantime, he heard the cries of children. He noticed that the residents of the building were gathered there. He also went there and found that Amruddin had already left the place. The door of the room was open and he saw a lady lying on the floor of the said room without any movement and the children were crying that their mother was no more alive.

13. PW-6 Vineet Gupta became the owner of House No.2077, Pagri Wali Gali/Gali Paranthe Wali, Chandni Chowk after the death of his brother-in-law. He has deposed that a room on the second or 3rd floor of the premises had been under tenancy of Amruddin for the last about 3-4 years on a monthly rent of Rs.3000/-. Accused had been doing embroidery work in the tenanted room and he had been residing there along with his two children aged about 14-15 years. On the date of incident at about 11:30 pm, he was present at his show room and was informed that a murder has taken place in House No.2077. He informed the police from the mobile of someone in the market and thereafter went to the spot where he found a lady lying dead on the floor of the tenanted room of the accused.

14. PW7, Arif is the son of the deceased who has deposed that Rehana was his mother. It was the second marriage of his mother with accused Amruddin. He and his elder sister Shabana were born from the first marriage and after death of his father his mother married to the accused. Rest of his two brothers and three sisters are from the second marriage. He along with his younger brother Raisuddin had been learning embroidery work from their father Amruddin and had been

residing in the tenanted accommodation in Gali Paranthe Wali, Chandni Chowk, Delhi. His mother along with other brothers and sisters had been residing at a house in Usmanpur, Burari, Delhi. His father used to have quarrels with his mother after consuming alcohol. On the fateful day, his mother had come at about 1:00 p.m. from Usmanpur to the tenanted room in Paranthe Wali Gali, Chandni Chowk. In the morning, when they were at Usmanpur, his father had a quarrel with the mother and at that time he threatened his mother that he would kill her. When his mother came at about 1:00 pm, he and his brother were doing embroidery work. Later in the evening, his father went away and came back at about 8:00 p.m. and then consumed liquor. Thereafter, at about 9:00 p.m., his father asked them to go out and bring some meal after giving Rs.50/-. When he along with his brother Raisuddin returned back at about 10:00 p.m. and knocked at the door, his father slightly opened the door and asked them to have meal outside and come back after some time. He saw his mother lying on the floor and her legs were not covered by any cloth. After taking meal, they went to the room of neighbour Sanjay where they started watching TV. After watching TV for about an hour, he along with his younger brother returned back to the room and started knocking the door but nobody responded or opened the door. One Imran came there and enquired as to what was happening and they informed him that nobody was opening the door. Finding no response, he and his brother besides Imran went back to the house of Sanjay and started watching TV. Sanjay had also knocked at the door and at that time, his father responded that he should come after some time. Imran also knocked at the door but his father did not respond. After an hour, his father came to the room of Sanjay and took Imran on one side and they had some discussion. Then Imran came and asked them to accompany him for leaving them at Usmanpur but they refused. Thereafter, Imran went away. He along with his brother went to the room and knocked at the door. They found that it was bolted from outside. They opened the latch and entered into the room and found their mother lying on the floor. They called their mother and tried to wake her up but she did not respond. They started crying. There was a towel/gamcha tied around the neck of the mother. His father was not present either in the room or outside the house at that time. Later on, somebody told them that his father has strangulated his mother to death by using gamcha/towel. On hearing their cries, many people

from the neighbourhood gathered. Police was called. He was interrogated by the police and his statement, Ex.PW7/A was recorded by the police which bears his signature at point A. Photographs were taken by the police of the place of occurrence where the dead body of his mother was lying. He identified the dead body of his mother and also the towel type gamcha (Ex.P1) which was around the neck of his mother, who was lying in her room on the date of incident. To the same effect is the testimony of PW8, Raisuddin.

15. PW14, Om Parkash has deposed that Amruddin was inducted as a tenant in house No.D-325 Vijay Colony, Usmanpur on a monthly rent of Rs.800/-. He remained tenant hardly for about two months. During this period, he observed that there used to be frequent quarrels between him and his wife.

16. PW15 Sabita Dass, Record Keeper, Delhi Commission for Women, brought record pertaining to the complaint, Ex.PW11/A of Rehana dated 15th September, 2009 made to the Delhi Commission for Women.

17. PW16 Mumtiyaz, is the brother of Rehana and has deposed about the harassment meted out to Rehana by the accused. He further deposed that accused Amruddin used to give her beatings and did not give her daily expenses. He used to keep an evil eye on his niece Shabana who was the daughter of Rehana from her first husband. Rehana had lodged a complaint against the accused at Delhi Commission for Women and copy was also submitted in National Commission for Women. He submitted the photocopy of the said complaint to the Investigating Officer who seized the same vide seizure memo, Ex.PW16/A.

18. PW20 SI Parveen Kumar collected the certified copy of the proceedings conducted at Delhi Commission for Women on the complaint of Rehana dated 15th September, 2009.

19. PW21 Inspector I.K. Jha is the Investigating Officer of the case who, on receipt of DD-39A reached the spot and found the dead body of Rehana lying on the floor. He deposed regarding the proceedings conducted by him at the spot, viz, recording the statement of Arif, son of the deceased, getting the FIR registered, preparation of site plan, inspection of spot by the crime branch and sending the

dead body to mortuary for post mortem examination. Thereafter he conducted inquest proceedings and got the post mortem examination done. He further deposed that on the basis of secret information on 4th January, 2010 the accused was arrested. After completing investigation, charge sheet was submitted against the accused.

20. Post mortem examination was conducted by PW10 Dr. S. Lal who gave his report Ex.PW10/A. As per the report, on external examination, following injuries were found:1. Ligature mark- A reddish brown parchment type ligature mark present around the neck, horizontally going backward direction on both side of neck and interrupted by ponytail of hair on back of neck. In Front The ligature mark was 3.5 cm. broad and placed 6 cm below the tip of chin. On left side, the ligature mark was 3 cm. Broad and placed 4 c.m. below the angle of mandible and going left side back of neck and absent upto 9 c.m. on back of neck and then continue to right side of neck. On right side neck - It is 3 c.m. broad and placed 4 c.m. below angle of mandible and then extent to right side back of neck.

2. Reddish abrasion 4 x 2 c.m. present over upper left side neck placed 2 c.m. left to midline and 2 c.m. below the mandibular boarder. Internal examination revealed that:Scalp and skull bone were normal, meninges intact and brain congested. In neck On fine dissection underline subcutaneous tissue shows extensive hemorrhage seen. Soft tissues of neck shows extra vassation of blood on both sides of neck with both upper horn of thyroid cartilage were fractured with extra vassation of blood. Tracheal mucosae was congested and petecheal hemorrhage seen on the base of tong. Bilateral lungs congested and petecheal hemorrhage seen at places. Stomach contained 200 ml of semi digested food material and the mucosae is normal. All the viscera of the deceased were congested.

21. It was opined that the cause of death was asphyxia due to ante mortem ligature strangulation and sufficient to cause death in ordinary course of nature. The ligature mark present over neck was possible by ligature material present around the neck. Time since death was about 18 hours.

22. From the evidence adduced by the prosecution, the following circumstances are clearly discernible:(i) The accused got married to Rehana and it was the

second marriage of Rehana. From the first marriage, Arif and Shabana were born, whereas from the second marriage there were two sons and three daughters. (ii) Accused was inducted as a tenant in House No.D-325, Vijay Colony, Usman Pur, Burari, Delhi where he along with his wife and children, except Arif and Raisuddin were residing. (iii) Accused had also taken on rent one room in house No.2077, Parathe Wali Gali/Pagri Wali Gali, Chandni Chowk, on third floor where his two sons Arif and Raisuddin were residing and they were learning embroidery work from the accused who used to come to the tenanted room. (iv) Rehana used to visit abovementioned house No.2077 off and on in order to meet her sons. (v) Accused was a drunkard and there used to be quarrel between husband and wife. He was keeping an evil eye on Shabana, daughter of the deceased from her first marriage and a complaint was lodged by Rehana with Delhi Commission for Women where accused was counselled to behave properly. (vi) On 22nd December, 2009, accused came along with Rehana to House No.2077 during day time and thereafter, he left for work. (vii) At about 8:00 pm, accused returned back to the room and consumed alcohol. (viii) At about 9:00 pm, he gave Rs.50/- to Arif to bring meal. Arif and Raisuddin went to bring meal and returned back at 10:00 pm. When the children Arif and Raisuddin knocked at the door, accused slightly opened the door and asked the children to have meals outside and come back after some time. (ix) After taking meal, the children went to the room of Sanjay and watched TV and again, returned back to the room and knocked the door. Sanjay also came and knocked at the door but they are told by the accused to come after some time. (x) Accused left the room after bolting from outside. On opening the room, the body of the deceased was found and accused was missing. (xi) Accused was along with the deceased in the room from 8:00 pm till around 10:30 pm. (xii) The deceased was found dead with a towel/gamcha tied around her neck. (xiii) The accused was absconding and was finally apprehended on 4th January, 2010. (xiv) As per the post mortem report, the cause of death was asphyxia due to ante mortem ligature strangulation.

23. It is not in dispute that the basis of conviction is solely on the circumstances relied on by the prosecution. In view of the same, it is relevant to understand the nature and various aspects relating to circumstantial evidence.

24. In Hanumant Govind Nagundkar v. State of Madhya Pradesh, 1952 SCR1091the nature, character and essential proof required in a criminal case that rests on circumstantial evidence alone has been laid down. This case has been uniformly followed and applied by this Court in a large number of later decisions up to this date.

25. In Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC116 a Bench of three Judges of Honble Supreme Court, after analyzing various aspects, laid down certain cardinal principles for conviction on the basis of circumstantial evidence. The Court laid down the following conditions which must be fulfilled before a case against an accused can be said to be fully established:

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

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

26. It is clear that even in the absence of eye-witness, if various circumstances relied on by the prosecution relating to the guilt are fully established beyond doubt, the Court is free to award conviction. Further, the chain of events must be complete in order to sustain the conviction on the basis of circumstantial evidence.

27. The first piece of evidence relied upon by the prosecution is last seen. In order to prove this circumstance, the prosecution basically relies upon the testimony of PW-1 Sanjay, PW-7 Arif and PW-8 Raisuddin.

28. As seen above, it has been established on record from the testimony of PW6 Vineet Gupta, PW1 Sanjay, PW7 Arif and PW8 Raisuddin and admission of the accused u/s 313 Cr.P.C. that the accused was a tenant in respect of one room on 3rd floor of House No.2077, Gali Paranthe Wali/Gali Pagri Wali, Chandni Chowk, Delhi at the monthly rent of Rs.3000/- per month where two of his sons, namely, Arif and Raisuddin used to reside and used to learn embroidery work from him.

29. On the fateful day, i.e., 22nd December, 2009, deceased had come to meet her sons at this house at about 1:00 pm in the afternoon along with the accused. Accused left for his work in the afternoon and returned back at about 8:00 pm. Accused consumed liquor. At about 9:00 pm, he gave them Rs.50/- to bring meal. They went and returned back at about 10:00 pm and knocked at the door, however, the door was slightly opened by the accused who asked them to have their meal outside and come back after some time. Both the children had their meals outside the room and they again knocked at the door but they were again asked to come after some time. As such, they went to the room of PW-1 Sanjay which was also on the 3rd floor and watched TV for some time. Again they came back and knocked at the door but nobody responded then PW1, Sanjay also came there and knocked at the door, however, he was asked by the accused to come later on. Thereafter, the accused went out. The door was opened by the children who found their mother lying on the floor.

30. The testimony of the children has been assailed by the learned counsel for the appellant on the ground that they were child witnesses and were at vulnerable age. Possibility of their being tutored by their maternal family cannot be ruled out, inasmuch as, although PW7 has denied having any talk with his maternal uncle or maternal grandfather but PW8 admitted that he had a discussion with his grandparents regarding the case before coming to the court. Furthermore, their testimony suffers from substantial improvements and embellishment as PW7, Arif has deposed that in the morning a quarrel had taken place between the accused and the deceased and at that time accused had threatened his mother to kill that day. However, this fact did not find mention in the initial statement made by him to the police. Furthermore, Imran has been introduced for the first time by the witnesses in their deposition in the Court. There is also discrepancy regarding the

place where alcohol was consumed by the accused.

31. Before proceeding to examine the contention raised by the learned counsel for the appellant, it is necessary to examine the statutory prescription with regard to competency of any person to give evidence in Court.

32. Indian Evidence Act, 1872 (in short the "Evidence Act") does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease- whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer J in Wheeler v. United States (159 U.S. 523). The evidence of a child witness is not required to be rejected per se; but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. [vide Surya Narayana v. State of Karnataka, 2001 (1) Supreme 1]..

33. The issue came up for consideration before Honble Supreme Court in State of Madhya Pradesh v. Ramesh and Anr., (2011) 4 SCC786where the issue regarding child witness was considered as under:

7. In Rameshwar S/o Kalyan Singh v. The State of Rajasthan, AIR 1952 SC54 this Court examined the provisions of Section 5 of Indian Oaths Act, 1873 and Section 118 of Evidence Act, 1872 and held that every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. There is always competency in fact unless the Court considers otherwise. The Court further held as under:

11... It is desirable that Judges and magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. But whether the Magistrate or Judge really was of that opinion can, I think, be gathered from the circumstances when there is no formal certificate....

8. In Mangoo and Anr. v. State of Madhya Pradesh, AIR 1995 SC959 this Court while dealing with the evidence of a child witness observed that there was always scope to tutor the child, however, it cannot alone be a ground to come to the conclusion that the child witness must have been tutored. The Court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring.

9. In Panchhi and Ors. v. State of U.P., (1998) 7 SCC177 this Court while placing reliance upon a large number of its earlier judgments observed that the testimony of a child witness must find adequate corroboration before it is relied on. However, it is more a rule of practical wisdom than of law. It cannot be held that:- "the evidence of a child witness would always stand irretrievably stigmatized. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring.

10. In Nivrutti Pandurang Kokate and Ors. v. State of Maharashtra, (2008) 12 SCC565 this Court dealing with the child witness has observed as under:

10. ...7.....The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because

child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross- examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness must be able to understand the sanctity of giving evidence on a oath and the import of the questions that were being put to him. (Vide: Himmat Sukhadeo Wahurwagh and Ors. v. State of Maharashtra, (2009) 6 SCC712.

12. In State of U.P. v. Krishna Master and Ors., (2010) 12 SCC324 this Court held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the Court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the Court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature.

13. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. (Vide: Gagan Kanojia and Anr. v. State of Punjab, (2006) 13 SCC516 14. In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.

34. The witnesses were examined by learned Additional Sessions Judge who had the opportunity to observe their demeanour. It was observed that when examined in the Court, both the witnesses gave a cool and confident response to the questions/quarries which were put to them. It was rightly observed by learned Additional Sessions Judge that the mandate of law is that the testimony of the child witnesses should be carefully scrutinised and examined so as to rule out any possibility of tutoring. The two child witnesses were the natural witnesses who were present at the spot throughout the relevant time. The version of the incident deposed by the witnesses appears to be very natural, cogent and reliable. Although, both the witnesses in the cross-examination stated that they were very much annoyed with their father, i.e., the accused, which of course was quite natural, but that alone does not call for any inference that they had any reason to depose falsely against the accused. The mere fact that the two witnesses had come to depose in the Court accompanied with their maternal grandmother and uncle cannot be a ground by itself to throw away their testimony. Both the witnesses withstood a gruelling crossexamination at the hands of defence counsel which could not bring out any embellishment or any fact which may reflect that the facts came out of their figment of imagination so as to cast any doubt on their evidence. There was nothing in the cross-examination of the two child witnesses

that would show that they were tutored or prompted to speak against the accused.

35. The submission of learned counsel for the appellant that testimony of witnesses suffers from certain improvements or exaggerations, the same is bound to occur, in as much as, ordinarily a witness cannot be expected to recall, correlate the sequence of events which takes place in rapid succession or in a short span of time. A witness though wholly truthful is liable to be overawed by the Court atmosphere and the piercing cross-examination by the counsel and out of nervousness, he might mix up facts, get confused regarding sequence of events or fills up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him.

36. In Krishna Pillai v. State of Kerela, AIR 1981 SC1237 it was held as under :

The prosecution evidence no doubt suffers from inconsistencies here and discrepancies there, but that is a short coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies, etc., go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of the incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. That is a salutary method of appreciation of evidence in criminal cases.

37. In Sidhan v. State of Kerala, 1988 Cr.L.J.

470, it was held :

Minor discrepancies regarding minute details of the incident including the sequence of events and overt acts are possible even in the version of truthful witnesses. In fact such discrepancies are inevitable. Such minor discrepancies only add to the truthfulness of their evidence. If on the other hand these witnesses have given evidence with mechanical accuracy that much have been a reason to contend that they were giving, tutored versions. Minor discrepancies on facts which do not affect the main fabric need not be taken into account by the courts if

the evidence of the witnesses is found acceptable on broad probabilities.

38. The principle that can be culled out from the aforesaid decisions are that minor discrepancies and inconsistencies cannot be given undue importance. The Court has to see whether inconsistencies go to the root of the matter and affect the truthfulness of the witness while keeping in view that discrepancies are inevitable in case of evidence of rustic and illiterate villagers, who speak them after long lapse of time. It was also observed in Sidhan v. State of Kerala (supra), that minor discrepancies need not be taken into account by the Courts, if the evidence of the witness is found acceptable on broad probabilities.

39. In Kurai and Anr. v. State of Rajasthan (2012) 10 SCC433 it was observed as under:

This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancy. Such discrepancies may even in law render credential to the depositions.

40. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during investigation. It is only when exaggeration fundamentally changes the nature of the case, the Court has to consider whether the witness was stating truth or not.

41. The submission that introduction of Imran or small child for the first time in their deposition is an improvement; moreover, PW7 has contradicted his brother PW8 regarding the discussion with the grandparents before coming to the Court and there is also contradiction in their testimony regarding consumption of liquor by the appellant is without substance. None of the contradiction or improvements pointed

out by learned counsel for the appellant affects the credibility of the witnesses, inasmuch as, the role assigned to Imran is that he also came to the spot and also knocked the door and subsequently when his father came out of the room he took Imran on one side and according to PW7 he had some discussion with Imran whereas PW8 deposed that accused confessed before Imran regarding killing of his wife, whereupon Imran asked them to accompany him so that he may leave them to their house at Usmanpur, but they refused and thereafter Imran went away. The prosecution is not relying upon any extra judicial confession allegedly made by the accused to Imran, and therefore, even if Imran was not cited as a witness, or did not find mention in the statement made by the witnesses, same does not affect their testimony. For the same reason, even if nothing has come in the testimony of these witnesses regarding the small child brought by Rehana with her as deposed by PW1, same is hardly of any significance. There is no contradiction in the testimony of the two witnesses regarding the place where appellant consumed liquor as PW7 deposed that appellant consumed alcohol outside the room. PW8 also deposed that sometime in the evening, appellant had some drink/alcohol with someone who was residing in nearby room, therefore, there was no question of recovery of any glass or bottle from the place of occurrence. As regards the submission that the statement of the witnesses were the result of tutoring by the maternal family, inasmuch as, PW8 has admitted that they had discussion with their grand-parents regarding the case before coming to the Court, the same is also inconsequential, inasmuch as, the police machinery was set in motion on the basis of statement, Ex. PW7/A made by PW7, Arif to the Police. The incident has taken place during the period 9:00 pm to 10:30 pm. Police was informed by PW6, Vineet who received the information regarding the murder when he was at his shop. DD No.39A was recorded at 10:57 pm. Without loss of time, the police reached the spot and recorded the statement of PW7 Arif. Rukka was sent at 1:15 am and FIR was registered at 1:30 am. At that juncture, there was no occasion for tutoring the child as no member of the family of the deceased was present at the spot. Every minute detail was given in this complaint made by the witness. As held in Kishan Singh vs. Gurpal Singh (supra) prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. Although PW8, Raisuddin admitted that

while coming to the Court, his grand-mother and maternal uncle discussed the matter with him and his brother, however, he went on stating that he had deposed everything truthfully. Before recording their statement, learned Additional Sessions Judge had tested their capability to understand the questions and answer them rationally and finding that the witnesses were quite responsive to the quarries put and answer the same in a confident manner un-fazed by the court atmosphere, the statements were recorded. They were subjected to a gruelling cross-examination by learned defence counsel but nothing material could be elicited to discredit their testimonies. Moreover, the appellant was none else but their own father with whom their relations were quite cordial which is reflective from the fact that they were learning embroidery work from him. It was only after the incident Crl. A. No.832/2011 that they became annoyed him which was quite natural but same does not give rise to any inference that they had any reason to depose falsely against the accused.

42. Moreover, the testimony of both these witnesses find corroboration from an independent witness PW1, Sanjay, who had no apparent reason to depose against the accused. This witness has corroborated the testimony of both these witnesses by deposing that when he returned back to his house from his work at about 9:00 pm, both the children of the accused were found watching TV in his room. Both the children went to their room and knocked at the door but the same was not opened by the accused. On hearing their noise, he also came to the room and called upon the accused to open the door but he replied that he would open the same after some time, therefore, he returned back to his room. On hearing the cries of the children, he went to the room and found the residents of the building gathered there and then found that a lady was lying on the floor of the room. Although, the witness did not support the case of prosecution in its entirety, inasmuch as, he denied that accused opened the door and after bolting the door from outside he went away in a hurry or that he saw the wife of the accused Amruddin namely, Rehana lying on the floor having a towel around her neck. The fact remains that so far as the version given by Arif and Raisuddin that they had been asked by the accused to bring meal and thereafter again and again they kept on asking him to open the door, he avoided the same and thereafter, they went to the room of Sanjay and watched TV over there and again attempted to get the

door open, even Sanjay asked the accused to open the door but he was asked to come after some time corroborates the version given by these two witnesses. As such, from the testimony of these witnesses, it stands proved that the accused was last seen with the deceased during the period 9:00 to 10:30/11:00 pm.

43. The legal position pertaining to appreciation of circumstantial evidence of last seen has been summarised in a Division Bench decision titled as Arvind @ Chhotu vs. State, ILR (2009) Supp.(Delhi) 704, in the following words:

(i) Last-seen is a specie of circumstantial evidence and the principles of law applicable to circumstantial evidence are fully applicable while deciding the guilt or otherwise of an accused where the last seen theory has to be applied. (ii) It is not necessary that in each and every case corroboration by further evidence is required. (iii) The single circumstance of last-seen, if of a kind, where a rational mind is persuaded to reach an irresistible conclusion that either the accused should explain, how and in what circumstances the deceased suffered death, it would be permissible to sustain a conviction on the solitary circumstance of last seen. (iv) Proximity of time between the deceased being last seen in the company of the accused and the death of the deceased is important and if the time gap is so small that the possibility of a third person being the offender is reasonably ruled out, on the solitary circumstance of last-seen, a conviction can be sustained. (v) Proximity of place i.e. the place where the deceased and the accused were last seen alive with the place where the dead body of the deceased was found is an important circumstance and even where the proximity of time of the deceased being last seen with the accused and the dead body being found is broken, depending upon the attendant circumstances, it would be permissible to sustain a conviction on said evidence. (vi) Circumstances relating to the time and the place have to be kept in mind and play a very important role in evaluation of the weightage to be given to the circumstance of proximity of time and proximity of place while applying the last-seen theory. (vii) The relationship of the accused and the deceased, the place where they were last seen together and the time when they were last seen together are also important circumstances to be kept in mind while applying the last seen theory. For example, the relationship is that of husband and wife and the place of the crime is the matrimonial house and the time

the husband and wife were last seen was the early hours of the night would require said three factors to be kept in mind while applying the last-seen theory. The above circumstances are illustrative and not exhaustive. At the foundation of the last seen theory, principles of probability and cause and connection, wherefrom a reasonable and a logical mind would un hesitatingly point the finger of guilt at the accused, whenever attracted, would make applicable the theory of last-seen evidence and standing alone would be sufficient to sustain a conviction.

44. In State of U.P. vs. Satish, AIR 2005 SC1000 it was held as under:

The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case, there is positive evidence that the deceased and the accused were seen together by witnesses-PW3 and PW5, in addition to the evidence of PW2.

45. The time gap between the deceased having last seen with the appellant and the death of Rehana is quite proximate as is evident from the post mortem report that time since death was about 18 hours. Thus, we are of the considered opinion that the incriminating circumstance of last seen stands firmly established from the above referred evidence.

46. It was submitted by the learned counsel for the appellant that the prosecution has failed to prove motive to commit the crime, inasmuch as, the complaint allegedly made by the deceased before DCW and NCW are not duly proved. The allegations as made in Mark PW16/X1and X2 do not match with the allegations as revealed from the order sheet. Furthermore, the complaint is signed by some Shamim which is distinct from Rehana and Atiq Rehman and Atiq Ahmad are different. On the other hand, it is submission of the learned Public Prosecutor for

the State that it has come in the evidence of the child witnesses that their father used to consume liquor on daily basis and then he used to beat their mother. PW14, Om Prakash, who had let out the premises at Usmanpur to the appellant, has also deposed regarding frequent quarrels between the appellant and his wife. Moreover, much prior to this incident, complaint, Mark PW16/X1 and PW16/X2 was lodged by the deceased with Delhi Commission for Women wherein she alleged that her husband used to beat her and was having an evil eye on her daughter Shabana from the first marriage. The minor variance pointed out by the learned counsel for the appellant are insignificant. Not only the children of the deceased deposed regarding frequent quarrels between the deceased and the appellant that after consuming liquor, appellant used to give beatings to the deceased, Om Prakash, landlord of the house, has also deposed about the quarrels. PW16 Mumtiaz, brother of the deceased has also deposed regarding giving of beatings by the accused to his wife and that he used to keep an evil eye on his niece Shabana, who was the daughter of Rehana from her first husband. He also deposed regarding giving of complaint by Rehana against the accused at Delhi Commission for Women with a copy to National Commission for Women which he handed over to the Investigating Officer of the case. Copies of the complaint supplied by this witness were verified by SI Parveen Kumar, PW20, who also obtained certified copy of the proceedings, Ex.PW11/B. A perusal of the complaint made by Rehana goes to show that she levelled allegations against her husband regarding ill treatment and that he used to give her beatings after making her naked. He used to keep an evil eye on her daughter and wanted her to indulge in immoral activities. Mumtiaz, PW16 had accompanied his mother and his sister Rehana to the office of Delhi Commission for Women. While his mother accompanied by Rehana went inside the office, he was standing outside the office. The complaint was written in the office of the Commission. Although it was suggested that the deceased never made any complaint to Delhi Commission for Women and National Commission for Women but no suggestion was given that the complaint, Mark PW16/X1 and PW16/X2 were not given by Rehana or that the same was not against the accused. The proceedings conducted at Delhi Commission for Women revealed that when the deceased appeared she stated that her husband threatened to kidnap her daughter and thereafter husband was

ordered to be summoned through DCP. The reproduction of the complaint was not required to be recorded in the proceeding sheet. The gist of the complaint was recorded and thereafter, the husband was ordered to be summoned. The further order sheet dated 24 th November, 2009 goes to show that the deceased informed that she was residing with her husband and accused assured to look after her and her children and, therefore, the matter was adjourned for 4 th January, 2010. However, much prior to this date, the deceased was murdered on 22nd December, 2009, therefore, since none appeared for the parties, the matter was closed, presuming that they may be living happily. All this reflects that the relation between the deceased and the appellant were not cordial. There used to be frequent quarrels. Moreover, accused was keeping an evil eye on the daughter of the deceased Rehana from her first husband which resulted in filing of a complaint before Delhi Commission for Women where the accused was also called. As such, the prosecution succeeded in establishing the motive for commission of crime.

47. The medical evidence also proves that it was a case of homicidal death. As per the opinion of doctor, the cause of death was asphyxia due to ante mortem ligature strangulation sufficient to cause death in ordinary course of nature. It has come in evidence that one towel/gamcha was tied around the neck of the deceased and the doctor has opined that the ligature present over the neck was possible to be caused by ligature material present around the neck. The horizontal mark on the neck of the deceased clearly indicated that she was strangulated and that it was not a case of suicidal death. The neck was not stretched and elongated. The ligature mark was not oblique nor non-continuous placed high up in the neck between the chin and larynx. Further the horizontal or transverse, continuous mark round the neck was below the thyroid on the neck and it was a clear case of homicidal death. The mere fact that there was no sign of external injury on the body of the deceased does not demolish the case of the prosecution in any manner. In Modis Medical Jurisprudence and Toxicology, Twenty-third Edition, Lexis Nexis, Butterworths Wadhwa, Nagpur, at page 576 in regard to symptoms of strangulation, it is opined that if the wind pipe is pressed so suddenly as to occlude the passage of air altogether, the individual is rendered powerless to call for assistance, becomes insensible and may die instantly. It is not even the case of the accused that it was a case of suicide. As such, it was proved that Rehana met

a homicidal death.

48. It is a settled legal proposition that in a case based on circumstantial evidence, where no eye-witness's account is available, the principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation for the same, 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. (Vide: State of U.P. v. Dr. Ravindra Prakash Mittal, AIR 1992 SC2045 Gulab Chand v. State of M.P., AIR 1995 SC1598 State of Tamil Nadu v. Rajendran, AIR 1999 SC3535 State of Maharashtra v. Suresh, (2000) 1 SCC471and Ganesh Lal v. State of Rajasthan, (2002) 1 SCC731 Ravirala Laxmaiah v. State of AP, (2013) 9 SCC283 49. In Neel Kumar @ Anil Kumar v. State of Haryana, (2012) 5 SCC766 Honble Supreme Court observed:

30. It is the duty of the accused to explain the incriminating circumstance proved against him while making a statement Under Section 313 Code of Criminal Procedure. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him. Recovery of incriminating material at his disclosure statement duly proved is a very positive circumstance against him. (See also: Aftab Ahmad Anasari v. State of Uttaranchal, AIR 2010 SC773.

50. In cases where the accused has been seen with the deceased victim (last seen theory), it becomes the duty of the accused to explain the circumstances under which the death of the victim has occurred. (Vide: Nika Ram v. The State of Himachal Pradesh, AIR 1972 SC2077 Ganeshlal v. State of Maharashtra, (1992) 3 SCC106 and Ponnusamy vs. State of Tamilnadu, AIR 2008 SC2110 51. In this context, observations made by Hon'ble Apex Court in the case of Trimukh Maroti Kirkan (supra) and particularly to paragraphs 15, 21 and 22 are relevant and the same are reproduced as under:

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 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. xx xx xx xx xx xx xx xx xx 21. In a case based on circumstantial evidence where no eyewitness 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 the Hon'ble Supreme Court. [State of T.N. vs. Rajendran 1999, VIII AD (SC) 348 = (SCC para 6); State of U.P. vs. Dr. Ravindra Prakash Mittal, [(1992) 3 SCC300:

1992. SCC (Cri) 642 : AIR 1992 SC2045 (SCC para 39 : AIR para 40); State of Maharashtra vs. Suresh, [(2000) 1 SCC471:

2000. SCC (Cri) 263]. (SCC pra 27); Ganesh Lal vs. State of Rajasthan, 1999, VII AD (SC) 558 = [(2002) 1 SCC731:

2002. SCC (Cri) 247]. (SCC para

15) and Gulab Chand vs. State of M.P.,[(1995) 3 SCC574:

1995. SCC (Cri) 552]. (SCC 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 places 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. In

Nika Ram vs. State of H.P., [(1972) 2 SCC80:

1972. SCC (Cri) 635 : AIR 1972 SC2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with khukhri and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal vs. State of Maharashtra, [(1992) 3 SCC106:

1993. SCC (Cri) 435]. the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under section 313 Cr.P.C. The mere 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 is a prime accused in the commission of murder of his wife. In State of U.P. vs. Dr. Ravindra Prakash Mittal, [(1992) 3 SCC300:

1992. SCC (Cri) 642 : AIR 1992 SC2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband illtreated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly Hon'ble Apex Court reversed the judgement of the High Court acquitting the accused and convicted him under section 302 IPC. In State of T.N. vs. Rajendran, [(1999) 8 SCC679:

2000. SCC (Cri) 40]. the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9pm and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account

of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of crime.

52. In view of the above, since the accused was last seen with the deceased, the burden of proof rests upon him to prove what had happened after he had sent the children to bring the meals and why did he not open the door despite their repeated knocking. Since, those facts were within his personal knowledge, it was incumbent upon him to give explanation as to how Rehana died but he took a stand of complete denial of his involvement in the crime and offered no explanation before the Court. The mere denial of the prosecution case coupled with absence of any explanation is totally inconsistent with the innocence of the accused.

53. His conduct in absconding after the incident is another incriminating piece of evidence against him. It is a matter of record that the murder of Rehana took place on 22nd December, 2004, however, he could be arrested only on 4th January, 2010. Although he has taken a plea that he was not arrested by the police but he himself has surrendered in the police station but the fact remains that during the period 22nd December, 2009 till 4th January, 2010, he was absconding.

54. In Virender Kumar Gara vs. State, 2001 II AD (Delhi) 319, a division bench of this Court was of the view that the fact that the accused absconding immediately after the incident was a strong factor to prove his guilt. In Amrit Lal Someshwara Joshi vs. State of Maharashtra, AIR 1994 SC2516 the appellant, who had also threatened the accused, was found absconding after her death. It was held that his having threatened the deceased and his absconding immediately after the death of the deceased by violence, lent very strong support to the case of the prosecution.

55. We may also refer to Ram @ Ram Dass vs State of Delhi, 2010 VII AD (Delhi) 83, where also the accused was absconding from his house after murder of his wife and he was not able to give any plausible explanation for his not being found in the house before he was arrested by the police. This was one of the circumstance which went against the accused.

56. Again, in Mangat Rai vs. State of Punjab, (1997) 7 SCC507also it was observed that the conduct of the accused in absconding from the scene of offence for a couple of days till he was ultimately arrested, which conduct though by itself, might not be conclusive, becomes a clinching circumstance and point an accusing finger at the appellant.

57. In the instant case also, the conduct of the accused in absconding after the incident is another piece of evidence which goes against him. No plausible explanation is forthcoming from the side of the accused regarding his absence from his house from the date of incident till his arrest.

58. In view of the above discussion, we reach the inescapable conclusion that the appellant had adequate motive to eliminate his wife. In spite of the fact that he had been in the same room and was last seen by PW1 Sanjay, PW7 Arif and PW8 Raisuddin, he failed to furnish any explanation as to under what circumstances, his wife was found dead. Medical evidence proved that it was a homicidal death. The conduct of the appellant in absconding from the place of incident also suggests his guilty mind.

59. Now we advert to the last limb of the argument of learned counsel for the appellant that without prejudice to her submission that no case is proved against the appellant, the disclosure statement pertaining to exculpatory portion has to be appreciated in favour of the accused and, therefore, at the most, offence under Section 304 IPC is made out for which reliance was placed on Madaiah vs. State by Yelandur Police, 1992 Crl. LJ502 Moreover, the appellant was not laced with any weapon nor he came to the room with pre meditation of eliminating his wife nor there was any external injuries as such, offence under Section 302 IPC is not made out.

60. This submission is again devoid of merit, inasmuch as, as per Section 25 of the Evidence Act, no part of the confession made by the accused to a police officer is admissible in evidence. Under Section 26 of the Evidence Act, the confession made in the presence of a police officer becomes admissible provided it is made in the presence of the Magistrate. Section 27 acts as a proviso which provides that, that portion of the confession made by the accused while in custody

is admissible in evidence which led to the disclosure of some material consequent upon the information furnished by the accused. Madaiah does not help the appellant, inasmuch as, in that case besides the confessional statement in the shape of disclosure statement made by the accused, there were other supporting evidence to prove that the accused acted under grave and sudden provocation and hence committed murder, therefore, case was, at best, one of culpable homicide not amounting to murder. Things are entirely different in the instant case. A perusal of statement recorded under Section 313 Cr.P.C. goes to show that the accused has denied making any disclosure statement Ex.PW18/C to the police. Having once denied this statement to the police, he cannot take shelter of this statement for submitting that the exculpatory part of the statement can be read in favour of the accused. He cannot be allowed to blow hot and cold in the same breath.

61. Moreover, assuming for the sake of argument that as per the case of prosecution, the accused had made the disclosure statement Ex.PW18/C, even then the same does not help the accused. The relevant portion of disclosure statement is reproduced as under:

mujhe apni biwi Rehana ke kisi se nazayaz sambandh ke bare mein chaar saal pehle maloom hua. Dinank 21/22.12.2009 ki raat 12 baje jab mai Chandni Chowk kaam karke ghar pahuncha to maine apni biwi Rehana ko galat kaam karte hue dekha. Mai gusse mei baahar aa gaya. Veh aadmi bhi peechhe peechhe ghar se nikalkar bhaag gaya. Gharwaali se poochha kaun tha to kehne lagi bijli ka mistri tha. Hamara kaafi jhagda hua. Maine usi samai soch liya dono ko khatm karna hai lekin meri biwi ne us aadmi kaa naam pata nahin bataya. Dinank 22.12.2009 ko mai apni biwi Rehana ko Chandni Chowk waale kamre per kareeb 1:00 baje lekar aaya. Biwi ko kamre per chhodkar kaam ke liye Chandni Chowk chala gaya aur 8:00 baje raat kamre par aaya tatha peen ke liye sharaab lekar aaaya. Kamre per sharab peene laga. Maine apne bade ladke Arif ko 50/- diye aur khana lane ko kaha jo usi samay lagbhag 9:00 baje raat Arif aur Raisuddin khana lene chale gaye. Maine usi samay mouka dekhkar kamre mei rakhi tauliya uthakar apni biwi Rehana ki gardan mei fanda dalkar saamne se gaanth baandh dee. Thodi hi der mei Rehana mer gai.

62. If the submission of learned counsel for the appellant is accepted as correct, then, even as per this disclosure statement, it was not a case of grave and sudden provocation. Rather he had seen his wife in compromising position on the night of 21st/22nd December, 2009 and he committed her murder on 22nd December, 2009 between 9:00 pm to 10:00 pm. As such, there was sufficient time in between to deliberate and ponder over the matter. As per this disclosure statement, he had planned to finish his wife and therefore, in a planned manner he brought her to the rented accommodation at Chandni Chowk, sent his children out on the pretext of bringing meal and murdered her by strangulating with a towel. As such, instead of helping, this disclosure statement goes against the appellant to prove that he not only intended to kill his wife but in fact killed her by strangulation. That being so, the authorities Golla Yelugu (supra), Madaiah(supra), Mottai Thevar (supra) has no application to the facts of the case in hand.

63. The result of the aforesaid discussion is that the appeal is bereft of any merit. The same is dismissed accordingly. Intimation be sent to the appellant through Superintendent Jail. Copy of the judgment along with Trial Court record be sent back. (SUNITA GUPTA) JUDGE (KAILASH GAMBHIR) JUDGE FEBRUARY21 2014/rs