

**Mukesh Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/1136364](http://sooperkanoon.com/1136364)

**Court :** Delhi

**Decided On :** Mar-28-2014

**Judge :** Sunita Gupta

**Appellant :** Mukesh

**Respondent :** State

**Advocate for Def. :** Mr. Sunil Sharma

**Advocate for Pet/Ap. :** Mr. K.B. Andley, Mr. M.L. Yadav

**Judgement :**

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

28. h March, 2014 + CRL.A. 453/1999 MUKESH Through: ..... Appellant Mr. K.B. Andley, Sr. Advocate with Mr. M.L. Yadav, Advocate versus STATE Through: ..... Respondent Mr. Sunil Sharma, APP % CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HONBLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. Mukesh Kumar has filed this appeal against the judgment and order on sentence dated 19th August, 1999 and 20th August, 1999 respectively, passed by learned Additional Sessions Judge, Karkardooma Courts, Shahdara, Delhi in

Sessions Case No.119/98 arising out of FIR No.386/1991, PS Gokalpuri whereby he was convicted under Section 302 IPC and was sentenced to undergo imprisonment for life and also to pay a fine of Rs.5000/-, in default of payment of fine to further undergo simple imprisonment of six months.

2. The case of prosecution, in brief is that deceased Radha, daughter of Prakash Chand, resident of J-212, Shakarpur, Delhi was married to the appellant Mukesh Kumar on 21st June, 1991, merely four and a half months before the incident which took place on the night intervening 1st- 2nd November, 1991 in Gali No.5, Prem Nagar, Delhi. Om Prakash is the father-in-law whereas Smt. Prakasho is the mother-in-law of the deceased. Madan and Kailash are the brothers-in-law and Smt. Prabha is the wife of Kailash whereas Smt. Suman is the sister-in-law of the deceased.

3. It is the case of prosecution that Radha visited her parents house thrice after her marriage and prior to the occurrence and during those visits, she informed her parents regarding the demand raised by the accused for Rs.40,000/- for running a shop which however could not be fulfilled by her parents. On the intervening night of 1st-2nd November, 1991, her brother-in-law Kailash along with 4-5 persons went to her parents house and informed about the illness of the deceased. Smt. Chando Devi (PW4) along with her son and other family members reached the spot and found the deceased lying under a chappar covered with a razai. On removal of razai, the parents noted injury marks on her neck. Froth was coming out of her mouth. There were strangulation marks on her neck. Quarrel ensued. Information was given to the police regarding the quarrel, as such, DD No.77B was recorded at PS Gokalpuri at about 6:30 am. Police officials reached the spot where they found Smt. Radha, wife of accused Mukesh Kumar, lying dead inside the house under chappar. Parents of the deceased and other relatives were found present there. Inspector R.S. Chauhan tried to contact the SDM. Since he was not available, he conducted inquest proceedings under Section 174 Cr.P.C. and thereafter the dead body was sent for post-mortem examination. Smt. Chando Devi, mother of the deceased gave a written application stating therein that Radha got married with Mukesh on 21st June, 1991. After marriage, she used to visit her house. On 27th October, 1991, Mukesh took Radha from her house to her

matrimonial home. On the night of 2nd November, 1991 at about 2:30 AM, Kailash, elder brother of Mukesh along with 5-6 persons came to her house and informed them about the serious condition of Radha. On reaching the house of Radha, they found that she had been killed by strangulation by Mukesh and his family members as the demand of Rs.40,000/- made by the accused persons could not be fulfilled. This statement culminated in registration of FIR under Section 302/34 IPC. Crime team was summoned at the spot. The SDM recorded the statement of Prakash Chand, father of the deceased and Som Pal Singh, brother of the deceased and thereafter, ordered for registration of the case under Section 498A/304B IPC. After completing investigation, charge sheet was submitted against the accused persons under Section 302/498A/304B IPC r/w Section 34 IPC.

4. Charge for offence under Section 302/304B/498A/34 IPC was framed against all the accused persons to which they pleaded not guilty and claimed trial.

5. The accused persons had examined DW1 Raja Ram and DW2 Narender Singh in order to prove that accused Madan Lal and Prabha were residing in separate houses.

6. After meticulously examining the evidence and the other material available on record, vide impugned judgment, learned Trial Court acquitted all the accused of the charges under Section 498A/304B IPC holding that the allegations of demand of dowry are vague, unspecific and does not inspire confidence. However, as regards offence under Section 302 IPC, accused Mukesh was convicted whereas remaining accused were acquitted.

7. Feeling dissatisfied with this part of the judgment, the present appeal has been preferred by Mukesh Kumar, challenging the impugned judgment and order on sentence dated 19th August, 1999 and 20th August, 1999 respectively. However, State has not preferred any appeal against the acquittal of the accused for offence under Section 498A/304B IPC and also against acquittal of remaining coaccused under Section 302/498A/304B/34 IPC.

8. The basic submission of Sh. M.L. Yadav, learned counsel for the appellant is that the case is based on circumstantial evidence and in a case based on circumstantial evidence, prosecution must establish all pieces of incriminating circumstances by reliable and clinching evidence. Reliance was placed on Ramreddy Rajesh Khanna Reddy & Anr. vs. State of Andhra Pradesh, 2006 (1) JCC541 Reliance was also placed on Meharaj Singh vs. State of UP, (1994) 5 SCC188 for submitting that there is a delay in lodging the FIR which is fatal to the case of prosecution. Moreover, in a case based on circumstantial evidence, motive plays an important role, however, in the instant case, no motive for committing the crime has been proved. No evidence has been led by the prosecution to prove that the appellant was impotent. In fact, the appellant has remarried and now has two children which itself is sufficient to prove that he is not impotent. It was a case of suicide which aspect was not considered by the learned Trial Court in proper perspective, as such, the impugned order is liable to be set aside.

9. Sh. Sunil Sharma, learned Public Prosecutor for the State on the other hand submitted that it is an open and shut case. The appellant has been taking different and inconsistent pleas which have been noted in the Trial Court judgment. The plea taken by the appellant in his statement under Section 313 Cr.P.C. that the deceased committed suicide is clearly an afterthought as no suggestion was given to any of the prosecution witnesses to this effect. The appellant has admitted that he was sleeping in the same room with the deceased. As such, the onus was very heavy upon him to prove as to how the unnatural death has taken place. However, no satisfactory explanation has been given. The impugned judgment has considered all the aspects in correct perspective and does not call for any interference and as such, the appeal is liable to be dismissed.

10. Before considering the rival submissions of learned counsel for the parties, it will be appropriate to briefly consider the relevant evidence on record.

11. PW1 Prakash Chand is the father of the deceased. He had deposed that he married his daughter Radha to accused Mukesh Kumar on 21st June, 1991. After her marriage, the deceased came to his house 2-3 times. Once she stayed with him for about 2 months. On her 4th visit, she informed him that accused persons

were harassing and torturing her and were demanding Rs.40,000/- for taking a shop and house for accused Mukesh Kumar. However, he expressed his inability to pay the amount. The deceased lastly visited his house about 20 days prior to her death. She was taken to her matrimonial home by accused Mukesh Kumar after about 10-15 days. Accused Kailash, accompanied by 4-5 other persons, visited his house and informed his wife about the illness of the deceased. However, one of them had even told his wife that deceased had already died. They went to the house of accused and found his daughter dead. Froth was coming out from her nose and mouth and there were marks of strangulation (tying with rope) on her neck.

12. PW2 Som Pal Singh is the brother of the deceased who has also deposed regarding harassment to the deceased on account of nonfulfilment of demand of Rs.40,000/-. He further deposed that on the intervening night of 1st /2nd November 1991, accused Kailash along with 5-6 persons came to the house and informed that the deceased has suffered a heart attack. He went to his father PW1 Prakash Chand in his factory and informed about the occurrence. Thereafter, at about 6:00 a.m., he along with his mother and wife went to the house of the accused where they found the deceased lying dead. Her body was lying under the chappar covered with a razai. He removed the razai and saw injury marks on her neck. The accused persons started going here and there and were ready to quarrel with them. As such, the police was called.

13. PW3 Shiv Kumar is another brother of the deceased who also went to the matrimonial house of the deceased on receipt of information about the occurrence and found his sister lying dead with injury marks on her neck.

14. PW4 Chando Devi is the mother of the deceased and has reiterated about the demand of Rs.40,000/- made by the accused persons for running a shop by accused Mukesh. She further corroborated the version of remaining witnesses regarding visit of accused Kailash with 4-5 persons to her house and giving the information about the occurrence whereupon she along with her son went to the spot and found her daughter lying dead under a chappar. Froth was coming out of her mouth. Neck was found strangulated.

15. PW5 Kamlesh is the wife of PW2 Som Pal Singh who also went to the matrimonial home of the deceased along with her mother-in-law and brother-in-law Shiv Kumar and found the deceased lying dead.

16. PW17 Inspector R.S. Chauhan is the Investigating Officer of the case who, on receipt of DD No.77B (Ex. PW17/A) regarding a quarrel in gali No.5 Gokalpuri, initially sent Head Constable Suresh Chand and one constable to enquire about the DD. Thereafter, on receipt of information regarding lot of quarrel at the spot, he along with ASI Amrit Ram (PW18) and two constables went to the spot and found the crowd over there. PW1 Prakash Chand along with his family members and the accused persons were present at the spot besides other crowd. A dead body of a female was lying under a chappar covered with a razai. On inspection of the body, a chunni was found lying on her chest. There was sign of red colour on her neck. Froth was coming out from her nose. A written complaint was given by Smt. Chando Devi. Despite efforts, since the SDM was not available till 3rd November, 1991, the dead body was sent to mortuary to avoid any untoward incident at the spot between the two parties. Chunni was seized vide Ex.PW1/A and was sent along with the dead body to the mortuary. Rukka, Ex.PW12/B was prepared on the written complaint given by Smt. Chando Devi and FIR Ex.PW12/C was got registered. After inspecting the site, he prepared site plan, Ex.PW17/B. The bed sheet was seized from the spot vide memo Ex.PW1/B. The exhibits were later on sent to CFSL from where results Ex.PW17/O, PW17/P & PW17/Q were collected which opined that human blood of A Group was found on the lady's shirt, brassiere, salwar, bed sheet and blood stained gauze. CRL.A. 453/1999 Baljeet Singh (PW19), In-charge, Crime Team inspected the spot and submitted the report Ex.PW17/DA.

17. Sh. Kishan Kumar (PW20) was working as SDM at Patel Nagar. On 4th November, 1991, he conducted inquest proceedings on the dead body of Smt. Radha. He made request for post-mortem vide Ex. PW17/C and PW17/D, brief facts Ex.PW17/E, filled death report form Ex.PW17/F and gave interim order for registration of the case vide Ex. PW17/DC.

18. Post-mortem on the dead body of Radha was conducted by PW13, Dr. L.T. Ramani. He gave his report Ex.PW13/A. On examination he found: there was a ligature abrasion mark present around middle part of neck. The ligature mark was prominent over thyroid cartilage and right side front 2 wide with rubbing of cuticle at places. The ligature mark continued behind almost horizontally upto posterior midline beyond which it was faint. On internal examination, the neck tissues showed effusion of blood in sub cutaneous tissues on the front of neck and sub mental region. It was opined by the Doctor that: the ligature marks were ante-mortem and were possible with nylon chunni shown to him. Death was due to asphyxia resulting from strangulation and the ligature constriction of neck was sufficient in the ordinary course of nature to cause death. Time since death was about 60 hours. After post-mortem, the clothes of the deceased, sample of blood and viscera were preserved, sealed and handed over to the police along with sample of seal. Chunni was also returned after duly sealed.

19. All the incriminating evidence was put to the accused persons while recording their statement under Section 313 Cr.P.C. Accused Mukesh pleaded that there was never a demand of dowry either by him or his family members. According to him, his brother Kailash and Madan along with their family were living separately while his sister Suman got married two years prior to his marriage at Lawar District, Meerut and she was residing with her husband at Meerut. According to him, he was already running a tailoring shop in his house, even prior to the marriage and no demand of Rs.40,000/- for a shop was ever made. He went on stating that on the intervening night of 1st-2nd November, 1991, he and his wife were sleeping in same room on separate cots. When he woke up, he found his wife unconscious since she tried to commit suicide by strangulation with a chunni which was tied with the legs of the cot from both sides. He raised an alarm and untied that chunni and brought her outside the room and informed his parents and brother. A doctor from Dr. Anitas clinic was called who examined the deceased and informed them that she was having a severe heart attack and she be taken to hospital. A three wheeler scooter was called. When they were going to take the deceased in TSR, her father and other family members arrived and they did not allow him to take the scooter from there. Her father rubbed something on her neck. The deceased was removed from the scooter and was put under the chappar of

the house. The deceased had gone to her parents house on 17th October, 1991 along with her father who had come to take her on the pretext of illness of her brother. Her father had taken all her ornaments including the one which was given in marriage to the deceased while taking the deceased to his house. On the occasion of Karva Chouth on 27 th October, 1991, he had gone to the house of his in-laws with gifts for the deceased. CRL.A. 453/1999 and she told him that her ornaments were with her father and were not returned to her at that time. After 3-4 days, the deceased had again gone to her parents house for demanding the ornaments but her father refused to hand over the same. She was beaten and sent back and was asked not go come again. For this reason, deceased had committed suicide. The remaining accused took the plea of false implication and denied that any demand of dowry was made by them. Besides that, accused Kailash admitted that he along with some of the neighbours had gone to give information to the family members of the deceased regarding the incident.

20. From the evidence adduced by the prosecution, the following circumstances are clearly established:(i) The marriage of Radha with the appellant Mukesh had taken place on 21st June, 1991. (ii) On the intervening night of 1st-2nd November ,1991, the appellant was sleeping in the same room with the deceased when she was found strangulated. (iii) Intimation was sent through Kailash and some neighbours to the family members of the deceased that the deceased was ailing and had suffered a heart attack. (iv) When PW1, PW2, PW3, PW4 and PW5 reached the house of the accused, they found the body of the deceased lying under a chappar covered with a razai. On removing the razai, they noticed injury marks on her neck. Froth was coming out from the nose and mouth of the deceased. (v) The atmosphere got tensed. As such, police was informed on which DD No.77B (Ex.PW17/A) was recorded. Inspector R.S. Chauhan along with other police officials reached the spot. (vi) The post-mortem examination revealed that Radha had died due to asphyxia as a result of strangulation. (vii) The chunni, bed sheet, clothes of deceased, blood sample were sent to FSL. (viii) As per the report, blood of human origin bearing blood group A was found on ladies shirt, brassiere, salwar, bed sheet and blood stained gauze.

21. In the case in hand, there is no eye witness of the occurrence and the case of prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence. [vide *Sharad Bhirdichand Sarda vs. State of Maharashtra*, (1984) 4 SCC116 *Sanatan Naskar & Anr. vs. State of WB*, (2010) 8 SCC249 *Aftab Ahmad Ansari vs. State of Uttarakhand*, (2010) 2 SCC583 and *Padala Veera Reddy vs. State of A.P.*, 1989 Supp. (2) SCC706.

22. Needless to say, the offence has taken place inside the matrimonial home. When the crime is committed in complete secrecy inside the house, it becomes very difficult for the prosecution to lead evidence but it does not mean that crime committed in secrecy or inside the house should go unpunished.

23. Dealing with this aspect of the matter in *Trimukh Maroti Kirkan vs. State of Maharashtra*, (2007) 1 SCC (Cri) 80, it was observed as under:14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC315 quoted with approval by Arijit Pasayat, J.

in *State of Punjab v. Karnail Singh*:

2003. riLJ3892 ). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate

extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. XXX XXX XXX<sup>21</sup> In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of Tamil Nadu v. Rajendran*, 1999 CriLJ4552 ; *State of U.P. v. Dr. Ravindra Prakash Mittal*, 1992 CriLJ3693; *State of Maharashtra v. Suresh*, (2000)1SCC471 ; *Ganesh Lal v. State of Rajasthan*, 2002 CriLJ967 and *Gulab Chand v. State of M.P.*, (1995)3SCR27.

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the

commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of Himachal Pradesh*, 1972 CriLJ1317 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' 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 v. State of Maharashtra*, 1992 CriLJ1545 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 were 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. v. Dr. Ravindra Prakash Mittal*, 1992 CriLJ3693, 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 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 ill-treated 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 this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of Tamil Nadu v. Rajendran*, 1999 CriLJ4552, 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 9.00 p.m. 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 the crime.

16. The question of burden of proof where some facts are within the personal knowledge of the accused was examined in *State of W.B. vs. Mir Mohd. Omar*, (2000) 8 SCC382 where the Honble Apex Court took note of the provisions of Section 106 of the Evidence Act and laid down the following principle in paras 31 to 34 of the reports:

31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the court what else happened to Mahesh at least until he was in their custody.

17. Adverting to the case in hand, the prosecution version as brought on record through the testimony of PW1, PW2, PW3, PW4 & PW5 reveals that Radha was murdered by strangulation. The defence version, on the other hand, is that the deceased Radha committed suicide by self strangulation with the help of a chunni. It is pertinent to note that various suggestions were given to the prosecution witnesses during course of their grilling cross-examination, however, no suggestion was given to any of the prosecution witnesses that Radha committed suicide. Rather the suggestions were to the effect that Radha was examined by doctor from Dr. Anitas clinic who declared that she suffered a heart attack and she should be moved to hospital; she was being taken to the hospital in a TSR but was prevented by the family members of the deceased from doing so; Prakash Chand, father of the deceased rubbed something on her neck.

18. In order to appreciate these suggestions, time of death is very crucial. The post-mortem was conducted by Dr. L.T. Ramani on 4th November, 1991 at about 12:00 pm. As per the report, the time since death was 60 hours meaning thereby the death of Radha had taken place around 12:00 in the intervening night of 1st-2nd November, 1991. The report Ex.PW17/DA given by the crime team also assumes significance, inasmuch as, the date and time of death has been given as May be at 2:30 AM in night on 2nd November, 1991. It further records:

As stated by husband Mukesh that we were sleeping in a room during night and she strangulated lying on the bed herself.

This clinches the whole issue regarding the time of her death that the same had taken place between 12:00 to 2:30 a.m.

19. According to PW4 Chando Devi, accused Kailash along with 4- 5 other persons came to her house on 2nd November, 1991 at about 2:30 a.m. and informed about illness of her daughter. Accused Kailash has admitted in his statement recorded under Section 313 Cr.P.C. that he along with some of the neighbours had gone to the house of Chando Devi to give information about the incident during the night. Chando Devi along with her daughter-in-law Kamlesh and son Shiv Kumar reached the spot where they found Radha lying under a chappar in dead condition and there were marks of strangulation on her neck and froth was coming out of her mouth. PW2 Som Pal Singh went to inform his father Prakash Chand at his factory and then came to the spot. Prakash Chand thereafter reached the spot. All these witnesses reached the house of the accused persons between 5:00 am to 6:00 am. If that was so, there was no question of Radha being alive when the witnesses reached the spot. There was absolutely no justification for suggesting to the witnesses that Radha was examined by a doctor who suggested that she has suffered a heart attack and required to be taken to hospital or that father of Radha had rubbed liquid on her neck. No doctor from Dr. Anitas clinic has been examined to prove that she was called or that she examined the patient and declared that she has suffered a heart attack and she should be removed to hospital. For the same reason, there is no question of calling a TSR and trying to remove Radha in that TSR to the hospital. All these suggestions are nothing but a vain attempt on the part of the accused to suppress the true facts regarding her death and to introduce extraneous facts and circumstances to create a doubt regarding the cause of her death.

20. Furthermore, it is the case of accused himself that the incident had taken place within the four corners of the room where he along with the deceased was sleeping on separate cots. A perusal of crime team report (Ex.PW17/DA) and scaled site plan (Ex.PW14/A) goes to show that the room where death of Radha had taken place by strangulation was shown at point A in the site plan (Ex.PW17/B) which is similar to the scaled site plan (Ex.PW14/A) where cots of Mukesh and Radha had been shown at point A and B where they slept. The dead body was found lying under a chappar at point D in the scaled site plan Ex.PW14/A and at point 4 as shown in site plan (Ex.PW17/B) prepared by the Investigating Officer. Thus, the dead body of Radha was removed from the room

itself to a chappar and there was considerable distance between the two places. Why the dead body of Radha was removed to the chappar is not explained. Similarly, there is no explanation as to who had removed her dead body. Except for Radha and Mukesh, none were available in the room and, therefore, the only irresistible conclusion is that it was Mukesh who had removed the dead body of Radha from the room to the chappar. Since Radha died in the room where she was sleeping with the accused and the death was unnatural one, the onus was upon the accused to explain the circumstances which led to her death.

21. The accused has taken the plea that it was a case of self strangulation as all the ornaments including the one which was given by the accused and his family members at the time of marriage were kept by her father who was not returning the same. It is also alleged that 3-4 days prior to her death, the deceased had gone to her parents house in order to demand return of the ornaments but she was beaten and was asked not to visit their house and, therefore, she had committed suicide. This suggestion has been denied by PW1 Prakash Chand. Marriage itself had taken place on 21st June, 1991 and within 4 months this unfortunate incident had taken place. Radha may have left the sweet memories of her parents home and gone to the matrimonial home with a hope that she will see a new world full of love in her grooms house. It does not appeal to reason that the parents of the deceased would remove all the jewellery of their daughter and will retain the same with them and despite demand, would not deliver the same to her or for that reason the deceased would take an extreme step of committing suicide.

22. The Apex Court in *Godabarish Mishra vs. Kuntala Mishra and Anr.*, (1996) 11 SCC264 held that suicide by self strangulation is a rare incident. Both in *Modi's Medical Jurisprudence and Toxicology* and in *Taylor's Principles and Practice of Medical Jurisprudence*, it has been clearly indicated that suicide by self strangulation is very rare. For committing suicide by self strangulation, the person committing suicide must take aid of a contrivance so as to ensure application of sufficient force until death by strangulation. Without such contrivance, sufficient force cannot be applied because initially with the application of force, insensitivity will develop for which the hands pulling the ends of the string must get loosened.

23. No specific suggestion was given to any of the prosecution witnesses that Radha committed suicide by self strangulation. Dr. L.T. Ramani who conducted post-mortem on the dead body of deceased observed presence of ligature mark. The extent to which they were caused on the neck reflected use of external force. In cross- examination, general questions were put regarding self strangulation and the doctor deposed that self strangulation is a rare phenomena where a person strangulates himself with the help of some ligature material by means of tying the ligature with some hook but the same is not possible manually by the deceased himself. Cases of self strangulation have been described in books but it is very rare and in his career of 23 years wherein he performed more than 20,000 postmortems, he did not come across a single case of self strangulation. No specific suggestion was put to the doctor that Radha strangulated herself. Had those questions been put to the witness, he would have been in a position to explain whether it was a case of self strangulation or not. But intentionally such questions were not put to the doctor in cross-examination, thereby leaving the plea of the accused as only a figment of his imagination. It was not humanly possible for the deceased to tie a chunni on her neck by lying down on the cot and then to tie both the ends of chunni to the legs of the cots on both sides. Self strangulation as suggested by the accused is quite improbable and such a plea seems to have been taken by the accused in order to save himself from the charge of committing the murder of Radha. Except the accused, no other person had any opportunity whatsoever to cause the murder of the deceased. The circumstantial evidence in this case are absolutely clinching in establishing the complicity of the accused in committing the murder of the deceased.

24. Learned counsel also urged that no motive was established for the appellant to commit murder of his wife. Reference was made to the disclosure statement (Ex.PW17/L) made by the accused wherein he stated that his wife used to tell him that he is impotent and has spoiled her life. She has taunted him on this account several times and had also threatened that she will disclose this fact to everybody and thereafter she will go to her parents house. Due to fear of insult, he strangulated her with a chunni. It was submitted that prosecution has failed to prove that the appellant was impotent. Reference was made to the subsequent events for submitting that the appellant has re- married and has now two children.

That being so, question of appellant being impotent does not arise and, therefore, there was no motive for him to commit the crime.

25. The disclosure statement is inadmissible in evidence under Section 25 of the Indian Evidence Act, 1872. Except for this disclosure statement, it is neither the case of prosecution nor of the accused that the accused was impotent or that his wife used to taunt him on this account or threatened him to inform others and due to fear of Radha making his impotency public, he committed her murder. Even otherwise in Modis Textbook on Medical Jurisprudence and Toxicology, Twenty-first Edition, page 341, the learned Author has extracted the well-set principles in which a party can be said to be impotent. A distinction has been drawn between impotency and sterility. It would be useful to extract the passage in question:

Impotence is defined as physical incapacity of accomplishing the sexual act, while sterility means inability for procreation of children. Impotence in males is the persistent inability to develop or maintain a penile erection sufficient to conclude coitus to orgasm and ejaculation. It should be remembered that the term impotence or sexual incapacity in forensic medicine connotes physical incapacity to accomplish the sex act. Impotence has been described in Halsbury's Laws of England to be such a state of mental or physical condition which makes consummation of the marriage a practical impossibility. An impotent individual need not necessarily be sterile, nor a sterile individual impotent, though both conditions may sometimes be combined in the same individual.

26. Medical science and legal jurisprudence have both accepted the position that as far as impotency is concerned, there are numerous instances where two perfectly normal human beings are found to be virtually impotent vis-a-vis each other; whereas they might be perfectly potent vis-a-vis another person. There may be sexual potency in general but impotency qua a particular spouse is also possible which is called impotency quoad hanc or quoad hunc.

27. Substantially similar view was taken in V. vs. S., MANU/MH/1083/1994 and in Ravi Luthra vs. Rekha, 201 (2013) DLT96 28. Under the circumstances, besides the fact that it was neither the case of prosecution nor of the accused that the unfortunate incident had taken place due to impotency of the accused, there was

no need for the prosecution to have established this fact.

29. Moreover, we cannot forget that it is generally a difficult area for prosecution to bring on record as to what was in the mind of the accused/appellant and why he chose to act in a particular manner because it is not easy to read the human nature being what it is. A man's passion may arouse at any time even on a very trifling issue. The motive of a man is often so deep seated as to be almost unfathomable. He alone is having the knowledge of the feelings which he may be having against a particular person. On the other hand, there are persons who are so indolent and tolerant that they do not even react on much more serious incidents. Man's behaviour and reaction differ from person to person and by no scale is measurable. In today's time when patience run low and anger is aroused over a very trifling matter, it cannot be said with utmost certainty that the act such as taunt/threats could not have been sufficient enough to form a motive for commission of an offence.

30. Dealing with the aspect of motive, in *Subedar Tewari v. State of U.P.*, 1989 Supp (1) SCC91 Honble Supreme Court observed as under:

The evidence regarding existence of motive which operates in the mind of an assassin is very often than (sic) not within the reach of others. The motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to the evil thought in the mind of the assassin.

31. Again reiterating the role played by motive in deciding as to whether the prosecution has proved the case beyond reasonable doubt against an accused, the Honble Supreme Court in the case of *Suresh Chandra Bahri v. State of Bihar*, 1995 Supp (1) SCC80 held as under:

Sometimes motive plays an important role and become a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act with illegal means with a view to achieve that intention. In a case where there is motive,

it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But the evidence bearing on the guilt of the accused nonetheless becomes untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime.

32. This view was reiterated in *Amitava Banerjee vs. State of W.B.*, (2011) 12 SCC554 where it was observed as under:

41. Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty.

42. Absence of motive in a case depending entirely on circumstantial evidence is a factor that shall no doubt weigh in favour of the accused, but what the Courts need to remember is that motive is a matter which is primarily known to the accused and which the prosecution may at times find difficult to explain or establish by substantive evidence.

43. Human nature being what it is, it is often difficult to fathom the real motivation behind the commission of a crime. And yet experience about human nature, human conduct and the frailties of human mind has shown that inducements to crime have veered around to what Wills has in his book "Circumstantial Evidence" said:

The common inducements to crime are the desires of revenging some real or fancied wrong; of getting rid of rival or an obnoxious connection; of escaping from the pressure of pecuniary or other obligation or burden of obtaining plunder or other coveted object; or preserving reputation, either that of general character or the conventional reputation or profession or sex; or gratifying some other selfish or malignant passion.

33. In Tarsem Kumar Vs. Delhi Administration, 1995 Cri.L.J.470, Supreme Court had repeatedly pointed out that where the case of prosecution has been proved beyond reasonable doubt on the basis of material produced before the Court, motive loses its importance but in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. It was further emphasised that if each of the circumstances proved on behalf of prosecution is accepted by the Court for the purpose of recording a finding that it was the accused who committed the crime in question even in absence of any proof of a motive for commission of such crime, the accused can be convicted.

34. As per the case of prosecution, since the parents of the deceased could not fulfil the demands of Rs.40,000/- that furnished the motive for committing the crime. However, as observed above, this aspect of the matter was not believed by learned Additional Sessions Judge that at the most can be said to be failure on the part of the prosecution to prove motive but that by itself is not fatal in view of the clinching evidence coming on record against the appellant.

35. Coming to the last limb of argument regarding delay in registration of FIR, it has come on record that on receipt of DD No.77B, Inspector R.S. Chauhan (PW17) went to the spot where the written complaint Ex.PW12/A was given by Smt. Chandro Devi, mother of the deceased. Inspector R.S. Chauhan admits that a cognizable offence was made out from the complaint, however, he did not get the case registered. The reason attributed for non-registration of FIR on the basis of this complaint was attributed to the fact that inquest was to be conducted by the SDM who had to record the statement of witnesses and, therefore, he was waiting for the direction of the SDM for registration of the case. However, since despite his efforts, SDM/ADM was not available till 3rd November, 1991, he made endorsement Ex.PW12/B on complaint Ex.PW12/A and got the FIR under Section 302/34 IPC (Ex. PW12/C) registered. However, inquest proceedings were conducted by Sh. Krishan Kumar, SDM (PW20) on 4th November, 1991 and gave direction vide order Ex.PW17/DC for registration of FIR under Section 498A and 304B IPC. As such, Sections 498A/304B/34 IPC were added in the FIR. Learned Trial Court has dealt with the aspect of delay in registration of FIR in correct

perspective by observing that when Inspector R.S. Chauhan reached the spot, a written complaint (Ex.PW12/A) was given to him by Smt. Chando Devi, mother of the deceased. He admitted that cognizable offence was made out from this complaint. Further he admitted that he examined the dead body of Radha, which was lying under a chappar and there was strangulation marks on her neck. A chunni was also lying there. After he returned to the police station, he also recorded a DD No.6A (Ex. PW7/A) stating therein that parents of Radha had informed him that death was not natural. Therefore, the action of the SHO in not getting the FIR registered was most callous and negligent. He acted in a whimsical manner for the reasons best known to him. Being a responsible officer and in-charge of the police station, it was imperative for him to get the case registered but his act and conduct was highly deplorable and he himself delayed the registration of the case. It was further observed that the witnesses have no control over the investigation. They can only make complaints to the police officers and in this case, such complaint was made to the SHO who was in-charge of the police station but he acted in most unprofessional manner but for that reason the rights of the victim cannot be affected. The learned Trial Court has not only noted this lapse on the part of the Investigating Officer but other lapses as well but rightly observed that de hors lapses in investigation, the evidence has to be appreciated and has to be scrutinized. The Court has not to play in the hands of the Investigating Officer or the prosecution. The accused cannot take advantage of tardy investigation. No fault can be found in this finding of the learned Trial Court.

36. In the earlier part of the judgment, we have given a resume of the evidence which is available on record. There are allegations regarding the harassment to the deceased on account of non-fulfilment of payment of Rs.40,000/- although the same were not relied upon by the learned Trial Court being vague and unspecific. After Radha had been murdered, information was sent to her parents that she had suffered a heart attack. The factual position, however, showed that she had strangulation marks on her neck and the medical evidence proved that she had died on account of asphyxia due to strangulation. The body of the deceased was purposely removed from the scene of crime. A false plea has been taken by the appellant in his statement under Section 313 Cr.P.C. that it was a case of self strangulation which was however, not proved. On the contrary, there was blood on

the clothes of the deceased and the bed sheet. The crime team report (Ex.PW17/DA) shows that there was blood on the bed sheet. The report of chemical analysis Ex. PW17/K also proved that there was blood on the lady's shirt, brassiere, salwar, bed sheet and the blood group was that of group A which was the blood group of deceased Radha. In the death report Ex.PW17/K there is a mention against column 19 that there was injury under right eye. Blood was also noted trickling from the nostrils by Dr. L.T. Ramani who had conducted the post-mortem as is evident from the report Ex. PW13/A. The presence of blood on the clothes of the deceased and bed sheet reflects that there was struggle/resistance by Radha as a result of which she received injuries. PW1, PW2, PW4 and PW5 have also noted froth coming from the mouth of deceased Radha. The circumstances enumerated above unerringly point to the guilt of the accused and they are inconsistent with his innocence.

37. Learned Additional Sessions Judge was, therefore, perfectly right in convicting the appellant under Section 302 IPC and sentencing him thereunder. The judgment is a well reasoned one which does not call for any interference. We, therefore, do not find any merit in the appeal, which is hereby dismissed.

38. The bail bond of the accused would stand cancelled. He is directed to surrender within two days failing which State is directed to take necessary steps to get him arrested to serve out the sentence of imprisonment for life. (SUNITA GUPTA) JUDGE (KAILASH GAMBHIR) JUDGE MARCH 28 2014 rs

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