Arshad vs.state

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Court : Delhi

Decided On : Sep-26-2017

Appellant : Arshad

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:

26. 09.2017 Crl. A. 36/2015 * % + ARSHAD STATE CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL HON'BLE MR. JUSTICE NAJMI WAZIRI Versus Through: Mr. Ajay Verma, Advocate ..... Appellant Through: Ms. Rajni Gupta, APP for State. ..... Respondent NAJMI WAZIRI, J.

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.), the appellant has impugned the judgment dated 26/09/2014 passed by the Additional Sessions Judge, Karkardooma Courts, Delhi, convicting the appellant for the offence under Section 302 of the Indian Penal Code, 1860 (IPC) and the order on sentence dated 30/09/2014 sentencing him with life imprisonment under Section 302 IPC and to pay a fine of Rs.10,000/-, in default of payment of which, he shall undergo one year RI.

2. The prosecution's case is that, on 04.09.2011 the appellant had called his sister PW-1/complainant Ms. Nishat Parveen at about 2.45 a.m. informing her about the death of Faizal, upon which she, her cousin Naseem @Babboo and his wife

reached the Appellant's house, where they found the appellant sitting Crl. A. 36/2015 Page 1 of 20 outside the house, with the deceased Faizal lying lifeless on the bed. Upon intimating the police, FIR No.6
was registered at the behest of PW-1; a scene of the crime report was prepared; postmortem was conducted; seizure memo was prepared; samples were sent to FSL and a charge under Section 302 IPC was framed on 19/12/2011, to which the Appellant pleaded not guilty.

3. To establish its case, the prosecution examined 18 witnesses - PW-1 (Farhat Naseem/ Nishat Parveen) is the complainant and sister of the deceased and the appellant. She proved Ex.PW-1/A. PW-2 (Rafat), sister of appellant and deceased. PW-3 (Mohd. Sajid) identified the body of Faizal vide his statement Ex.PW-3/A. PW-4 (HC Mahaj Singh) was the Duty Officer. He had recorded the FIR Ex.PW-4/A and had also recorded DD Nos. 14-B and 15-A, which are Ex.PW-4/C and Ex.PW-4/D respectively. PW5 (Shahnawaz), the neighbour of the deceased and the appellant, gave his statement. PW-6 (Dr. Akash Jhanjee) conducted the postmortem of the body of the deceased. His report is Ex.PW-6/A and his subsequent opinion apropos the nylon rope is Ex.PW-6/B. PW-7 (Dr. Rajni Lohia) examined the appellant and prepared his MLC Ex.PW-7/A and preserved his scalp hair. PW-8 (SI Naveen Kumar) was a member of the Mobile Crime Team who inspected the scene of crime and prepared the scene of crime report Ex.PW- 8/A. PW-9 (SI Karamveer), on receipt of DD No.14-B, along with Constable Narender went to the crime scene where they found the body of the deceased. He recorded the statement of PW1 and prepared the Rukka Ex.PW-9/A and sent the same to Police Station through Constable Narender. After the registration of the FIR, Constable Narender came at the spot with Inspector AmIeshwar Rai, who took over the investigation. The crime team inspected the spot and took photographs; the exhibits were seized from the spot; on interrogation, the appellant gave his Crl. A. 36/2015 Page 2 of 20 disclosure statement Ex.PW-1/E. PW-10 (Constable Sandeep), the Crime Team Photographer took photographs of the spot which are Ex.PW-10/A-1 to Ex.PW-10/A-18 and their negatives are Ex.PW-10/A-19 to Ex.PW-10/A-36. PW-11 (Constable Narender Kumar) assisted SI Karamveer in the investigation of the case. He had taken the rukka to the Police Station for the registration of the FIR. PW-12 (SI Mukesh Kumar Jain), the Draftsman, prepared

the scaled site plan Ex. PW-12/A. PW-13 (Constable Kuldeep) deposited the exhibits at FSL. PW-14 (Inspector Rishipal Sharma) took charge of the investigation on 04.11.2011; he prepared the scaled site plan, recorded the statements of SI Mukesh Jain and SI Karamveer, prepared the charge sheet, collected the FSL result Ex. PX and filed the same in court. PW-15 (Inspector Amleshwar Rai) took over the investigation after registration of the FIR and prepared the rough site plan Ex.PW-5/B. PW-16 (HC Devender Singh), then MHC(M), proved the relevant entries of Register No.19 as Ex. PW-16/A and Ex. PW-16/B and also proved the copies of Road Certificates as Exs.PW16/C, D and E. PW-17 (Constable Rachna, Computer Operator, PS Shakar Pur) typed the FIR on computer. PW-18 (Harshwardhan, Finger Print Expert, Crime Team) stated that no chance print was found from the spot.

4. Statement of accused was recorded under Section 313 Cr.P.C. The defense examined two witnesses, DW-1 (Mohd. Iqbal) and DW-2 (Mohd. Sharafat), who is the brother-in-law of the appellant and the deceased. The Trail Court held appellant Arshad guilty of offenses committed under section 302 IPC.

5. It is the case of the appellant that the deceased Faizal was unhappy with his life and on the intervening night of 3rd-4th September, 2011, after getting Crl. A. 36/2015 Page 3 of 20 into an argument with the appellant, committed suicide by hanging himself. The learned counsel for the appellant submits that the deceased had a history of suicidal tendency and inflicting injuries to his person under the influence of alcohol. He refers to the testimonies of PW2 Rafat, sister of the deceased, and her husband DW2 Sh. Mohd. Sharafat in this regard; that Faizal wished to marry a girl of his liking and under the influence of alcohol and drugs would instigate fights with the appellant about the same; that this is corroborated by the testimonies of PW1, PW2 and DW2; that the prosecutions star witness PW2 turned hostile and did not support the case of the prosecution apropos motive. He argues that in cases where the prosecution has relied solely on circumstantial evidence, motive assumes considerable relevance. He also relies on the testimony of DW1 Sh. Mohd. Iqbal, who places the appellant at India Gate at the time of death of Faizal.

6. The learned counsel for the State refutes the aforesaid contentions. She submits that PW1, the informant at whose behest the Rukka was prepared, has supported the case of the prosecution regarding existence of animosity between the appellant and the deceased because the former held the latter responsible for his marital problems and would, under the influence of alcohol, threaten to kill the deceased. PW1 states:-

"It is correct that Faisal had informed me and my sister Rafat on telephone that Arshad used to beat him and tells that he would kill him... 7. She however submits that the testimony of PW2 is inconsistent and contradictory in relation to the motive and thus cannot be relied upon. At the first instance in the examination-in-chief, the said witness deposes:-

"In July 2010, I came to stay at the house of accused for Crl. A. 36/2015 Page 4 of 20 about one month, Accused Arshad used to say that his wife had left him because of Faisal. Under the influence of liquor, Arshad used to tell Faisal that he would not spare him because his wife had left him due to him. One day Faisal told me on telephone that the family of Arshad has been spoiled because of him and therefore he would commit suicide. He told me about this under the influence of liquor. The wife of accused Arshad named Anjum did not like Faisal and did not want that he should live with them. On 03.09.2011 at about 11.30 pm, Arshad informed me on telephone that Faisal was quarrelling with him for the reason that his elder sister was not getting him married and also told that he was fearing that Arshad may hurt himself. I wanted to talk with Faisal but accused Arshad did not allow me to talk with Faisal. Same night at about 3.30 am, my sister Farhat informed me about the death of Faisal. At 10.00 am, I reached the house of accused and found the body of Faisal in the bedroom and noticed a cut mark on his neck. There were contusion marks on his arms. On being asked, accused told me that he had not cooked food for Faisal and due to this reason, a quarrel took place between him and Faisal and out of anger, he committed suicide by tying rope in his neck. Police recorded my statement at PS Shakar Pur. (emphasis supplied) 8. The argument of defense that it was a suicide and not murder was found untenable by the Trial Court as there was no explanation about 15 other injuries on the body of the deceased, all of which were found to be ante- mortem.

The Post Mortem Report records the injuries as under:

1. Lacerated wound 3 x 0.6 cm x scalp layer deep present on the left side parietal region of the head 6.5 cm above and in front of left ear pinna top with no fracture underneath. Margins were reddish color and bruised.

2. Contusion swelling reddish over outer surface of left Crl. A. 36/2015 Page 5 of 20 upper eye lid in area of 3 X25 cm.

3. Abrasion reddish 1 x 0.5 cm present over the back of left ear pinna outer border.

4. Contusion .swelling bluish black 3 x2 cm over left cheek region of the face below left eye outer angle.

5. Abrasion reddish 1 x 0.5 cm over outer front of middle half of left leg region.

6. Abrasion reddish 0.3 x0.3 cm present over the back of right wrist region middle portion.

7. Contusion reddish 3x1cm with swelling present over back of upper half of right forearm.

8. Contusion reddish with swelling 2x1 cm over back of middle half of right forearm.

9. Contusion swelling reddish 5 x 4 cm over back of upper half of right arm with two abrasions reddish measuring 1 x 0.5 cm and 1 x 0.6 cm present over the middle portion.

10. Abrasion contusion reddish 2 x 1 cm over outer surface of middle half left arm region.

11. Multiple abrasion contusion reddish 3 x 3 cm over outer surface of right shoulder region.

12. Contusion reddish 1.2 x 1 cm over outer front of middle half right arm region.

13. Abrasion reddish 1.5x1 cm over front of middle half left arm.

14. Multiple contusion reddish 4 x 2.1 cm with swelling present over upper half of left arm. Crl. A. 36/2015 Page 6 of 20 9.

15. Abrasion reddish 2 x1cm over back of upper half of left chest region over scapular region.

16. Abrasion reddish 2x1.2 cm over back of right shoulder region.

17. Ligature mark in the form of pressure abrasion present completely encircling the neck over the middle portion being placed 6 cm below the chin in mid line level, 4 cm below right angle of mandible, 3.3 cm below right mastoid process, 4.6 cm below left angle of mandible, 4.2 cm below left mastoid process over front of the neck. The base of the mark was reddish brown and soft. The mark was present 0.8 cm below the posterior hairline over back of the neck. It also showed crescentric nail abrasion marks 0.4 x0.1 cm reddish over right side front of the back at the level of 1.5 cm in front and below the right angle of mandible (strangulation mark). The Trial Court observed that:

"28. The postmortem report Ex.PW-6/A proves as many as 17 injuries on the person of the deceased. All the injuries except injury No.4 were found to be ante-mortem injuries. Assuming for the sake of arguments that Faizal committed suicide by strangulation, where is the explanation for the other 15 injuries on his person. Accused did not offer any explanation for the injuries found on the person of Faizal even during his statement under Section 313 Cr. PC. Rather, in reply to Question No.22, he stated that there was no injury on the body of Faizal and thus tried to conceal the injuries."

10. The learned counsel for the State also relies on the post-mortem report EX.PW-6/A which records that the cause of death to be asphyxiation due to strangulation and homicidal in nature. The post-mortem report was not challenged by the defense and even PW6 Dr. Akash Jhanjee, who conducted Crl. A. 36/2015 Page 7 of 20 the post mortem, was not cross-examined. The cause of death, as per report, is Asphyxia as a result of ligature strangulation via injury No.17, which is sufficient to cause death in the ordinary course of nature. The medical evidence therefore remains unassailed. Reliance has been placed on Modi's Medical

Jurisprudence and Toxicology1 which states:

"To arrive at a conclusion that death was due to strangulation, it is necessary, therefore , to note the effects of violence in the underlying tissues in addition to the ligature mark or bruise marks caused by the fingers or by the foot, knee, etc, and other appearances of death from asphyxia. At the same time, the possibility of other causes of suboxic or asphyxial death should be excluded."

11. The respondent contends that the nature of the injuries is consistent with that in cases of strangulation, in view of the damage caused to the trachea.

12. Lastly, the counsel for the State argues that while motive does play an important part in proving the guilt of the accused, the mere absence of motive does not fatally affect the case of the prosecution. She relies on Kishore Bhadke vs. State of Maharashtra (2017) 3 SCC760 wherein the Supreme Court observed:-

"In the reported decision, this Court has also observed that mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But in the case of circumstantial evidence motive, does assume some relevance. If it is evident from the evidence on record that the accused had an opportunity to commit the crime and the established circumstances along with explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be considered to show that 1 BV Subhrahmanyam, Modi's Medical Jurisprudence & Toxicology, Page 267 (22nd Edition, 1999) Crl. A. 36/2015 Page 8 of 20 within all human probability the crime must have been committed by the accused. On the facts of the present case, we find no tangible reason to disturb the concurrent findings recorded by the two Courts below. 13. The other ground on which the learned counsel for the appellant assails the conviction is the recovery of the nylon rope Ex.PW-l/H, which he disputes. He submits that the rope was never identified in court as to it being the same rope which was recovered from the crime scene. He relies on the testimony of PW1, who states:-

"After postmortem, the body was handed over to me and my husband on 05.09.2011vide receipt Ex.PW-1/D which bears my signatures at point A. Police interrogated the accused at the flat and thereafter took him to PS Shakar Pur. At about 1.00 pm, Inspector of police came at the flat and told us that accused Arshad has informed about the nylon rope lying in a,cabin at the flat. On the search of the cabin, nylon rope was recovered from the cabin. I can identify the rope. I do not want to say anything else. At this stage, a sealed pullanda the seal of ICAAAGH produced from the Malkhana of the police station is opened and a green colour nylon rope is taken out and shown to the witness who states that she cannot say that the rope Ex.P-1 produced is the same rope which was recovered from the cabin of the flat. (emphasis supplied) 14. Refuting the said argument, the counsel for the respondent relies on the testimonies of PW9 SI Karamvir, PW10 Ct. Sandeep and PW15 Insp. Amleshwar Rai, who were present at the spot on 04.09.2011 when the nylon rope Ex.PW-l/H was recovered at the instance of the appellant. PW9 SI Karamvir deposed as under:-

"On interrogation, accused gave disclosure statement Crl. A. 36/2015 Page 9 of 20 Ex.PW-1/E which also bears my signatures at point B. Accused was then arrested vide memo Ex.PW-1/F and his personal search was conducted vide memo Ex.PW-1/G, both the memos bear my signatures at point B. Accused then got recovered a nylon rope of green colour on which a piece of cloth was tied from the store room from his flat. They were kept in the -pullanda and sealed with the, seal of AR. The sealed pullanda was sealed vide memo Ex.PW-1/H which bears my signatures at point B, I took accused for medical examination 15. PW15 Insp. Amleshwar Rai corroborates this in his cross examination wherein he states:-

"Statement of Shahnawaz was recorded. Accused was interrogated. He was arrested vide arrest memo Ex.PW1/F and his personal search was conducted vide memo Ex.PW1/G. On interrogation he gave disclosure statement Ex.PWI/^ Accused then got recovered a 10 ft. long green colour nylon rope from a cabin from the lobby outside the room which was stated to be the ligature material. The rope was converted into a cloth pullanda which was sealed with the seal of AR and seized vide memo Ex.PW1/H' Accused was sent to LBS Hospital with Si Karamveer for medical examination. I also sent the request for preserving the hair

of the accused 16. The respondent contends that the testimonies of PW9 and PW15 read with Exs. PW-10/A1-A18 evidence the recovery of the nylon rope at the scene on 04.09.2011. The same was corroborated by PW1 in her examination-in- chief, however, she later resiled from her statement of identifying the recovered rope. Since PW1 has turned hostile and thus reliance cannot be placed solely on her testimony.

17. Lastly, counsel for the appellant submits that since the appellant had no Crl. A. 36/2015 Page 10 of 20 special or specific knowledge about the death of the deceased, in view of this alibi the burden of proof under section 106 of the Indian Evidence Act, 1872 (IEA) has been erroneously placed upon the appellant. He contends that since the entire case of the prosecution rests on circumstantial evidence it was for the prosecution to cogently prove its case without a break in the link of sequence leading to the crime. He submits that the prosecution has failed to prove the presence of the appellant at the scene when the incident occurred. He relies on the judgement of Sucha Singh v. State of Punjab (2001) 4 SCC375which held:-

"20. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference. 18. The State submits that there is overwhelming circumstantial evidence against the appellant such as (i) that there was a history of animosity between the brothers regarding domestic disputes; (ii) that under the influence of alcohol, the appellant would threaten the deceased; (iii) that the appellant has failed to provide a credible alibi regarding his whereabouts at the time of the incident. The counsel refers to the statement of accused/appellant recorded under Section 313 Cr.P.C. wherein he states:-

"They are false and interested witnesses. The statements of my sisters were recorded wrongly. Even my sisters objected about the manner in which the police

were recording their Crl. A. 36/2015 Page 11 of 20 statements but the police told them that it is a procedure in the death case and then the police tried falsely to convince my sister that I am the murder of my brother whereas I was not present there till 12.30 am. In fact 1am working as waiter cum table boy in a restaurant namely Zaika Restaurant and I generally come back from the restaurant after 12.00 midnight. I go to the restaurant at 12,00 noon and my duty at Zaika Restaurant is from 12.00 noon to 11.30 pm. The Zaika Restaurant is situated at Dariya Ganj, Delhi. Generally the restaurant is opened till late night. 19. However, despite being given an opportunity to present defense witnesses, the appellant failed to produce any person from Zaika Restaurant, the place where he claimed to be employed, who could confirm his presence at the restaurant on the intervening night of 3rd-4th September, 2011. Furthermore, DW1 Sh. Mohd Iqbal, contradicted the story of the appellant and deposed as under:-

"I know accused Arshad since 2007-2008 as we used to play cricket together. In the year 2011 on 03.09.2011, it was 4th day after Eid and I and Arshad made a plan to visit India Gate. I reached at the flat of accused Arshad at about 5/5.30 pm. When we reached in the gali where the flat is situated i.e. Ramesh Park, Laxmi Nagar, Delhi accused Arshad and his brother Faisal met me. Faisal was in inebriated condition and there were injury marks on his head, cheek and eye brow. Arshad left Faisal at the flat and I and Arshad proceeded to India Gate for roaming. At about 12/12.30 in the night, I dropped Arshad at Pushta of Ram.esh Park and I went to my house at the above said address. I and Arshad went to India Gate on my motor cycle. 20. Counsel refers to the testimony of PW2 Rafat who had deposed that:-

"On 03.09.2011 at about 11.30 pm, Arshad informed me Crl. A. 36/2015 Page 12 of 20 on telephone that Faisal was quarrelling with him for the reason that his elder sister was not getting him married and also told tolt he was fearing that Arshad may hurt himself. I wanted to talk with Faisal but accused Arshad did not allow me to talk with Faisal... 21. The impugned judgment notes:

"No suggestion has been put to the witness in cross examination that no such phone call was made by accused at 11.30 pm. It therefore stands proved that

accused was present at his house at 11.30 .pm-on 03.09^011 and at that time, a quarrel was going on between him and his brother Faizal. The presence of accused in the house at the time of occurrence the deceased had died in the late night hours when the accused was expected to be present in the house and therefore the same is highly suggestive of the fact that accused was present in the house in question around the time of the death of the deceased."

therefore stands proved. Moreover, 22. The Court would note that Call Detail Records (CDR) of 03.09.2011 to 04.09.2011 were not produced in Court, however, the call to his sister at 11.30 p.m. on 03.09.2011 was not challenged by the defense counsel and thus remains an undisputed fact. There are notbale contradictions in the defense case regarding the alibi of the appellant at the time of the incident.

23. Furthermore, even if the statement recorded under section 313 Cr.P.C. were to be relied upon, the defense has not been able to explain the inordinate delay in informing the neighbours or intimating the police between 12.30 am which is when the appellant allegedly returned home after his days work at Zaika Restaurant and 1.45 am when the appellant went over to the house of PW5 Shanawaz Ahmad seeking help. It is an undisputed fact that the deceased Crl. A. 36/2015 Page 13 of 20 and the appellant were the only people living in the flat and there was no sign of forced entry in it. There was animosity and domestic tension between the brothers. At the time of the incident, the appellant has not been able to establish an alibi apropos his whereabouts. The nylon rope Ex. PW-1/H, which was used to strangulate the deceased, was recovered at the instance of the appellant. The respondent has argued that section 106 IEA shifts the burden of proof in cases where any fact may be in special knowledge of someone. Section 106 IEA reads as under:-

"Section 106 - Burden of proving fact especially within knowledge: When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

24. The impugned judgment notes:

"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 where an incriminating circumstance is put to the accused and the said accused 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 the catena of judgments of the Hon'ble Supreme Court (State of Tamil Nadu Vs. Rajendran MANU/SC/0606/1999; State of U.P. Vs, Dr. Ravindra Prakash Mittal MANU SC/0402/1992; State of Maharashtra Vs. Suresh MANU/SC/0765/1999: Ganesh Lai Vs. State of Rajasthan l\/t ANU/SC/0694/2001 & Gulab Chand Vs. State of M.P. MANU/SC/0304/1995."

25. In view of the above, the learned counsel for the State contends that the prosecution has discharged the onus of prima facie establishing their case Crl. A. 36/2015 Page 14 of 20 regarding circumstantial evidence. Once circumstantial evidence prima facie establishes the prosecution case, the burden of proof under Section 106 IEA shifts to the accused i.e. the person having special knowledge of any fact which may exonerate him. In State of Rajasthan vs. Kashi Ram (2006) 12 SCC254 the Supreme Court discussed the scope of section 106 of the Evidence Act, and observed as under:-

"17. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always

upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Re. Naina Mohd. AIR1960 Mad 218. There is considerable force in the argument of counsel for the State that in the facts of this case as well it should be held that the respondent having been seen last with the Crl. A. 36/2015 Page 15 of 20 deceased, the burden was upon him to prove what happened thereafter, since those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt.(emphasis supplied) 26. In the present case the accused is the only person who was living with the deceased; there was no forced entry into the flat, therefore, the burden of proof of special knowledge would be upon him otherwise. The claim of additional link will be proved completed against him. In the circumstances, the appellant would have known about how the 17 injuries came on the body of the deceased. The Supreme Court in Sawal Das vs. State of Bihar AIR 1974 SC778 held:-

"8. We think that the burden of proving the plea that Smt. Chanda Devi died in the manner alleged by the appellant lay upon the appellant This is clear from the provision of Sections 103 and 106 of the Indian Evidence Act. Both the Trial Court and the High Court had rightly pointed out that the appellant had miserably failed to give credible or substantial evidence of any facts or circumstances which could support the plea that Smt. Chanda Devi met her death because her Nylon Saree had accidentally caught fire from a kerosene stove. The Trial Court had rightly observed that the mere fact that some witnesses had seen some smoke emerging from the room, with a kitchchen nearby at a time when food was likely to be cooked, could not indicate that Smt. Chanda Devi's saree had caught fire. Neither the murdered woman nor the appellant nor any member of his family was shown to have run about or called for help against a fire.

9. Learned Counsel for the appellant contended that Section 106 of the Evidence Act could not be called in aid Crl. A. 36/2015 Page 16 of 20 by the prosecution because that Section applies only where a fact relating to the actual commission of the offence is within the special knowledge of the accused, such as the circumstances in which or the intention with which on accused did particular act alleged to constitute an offence. The language of Section 106 Evidence Act does not, in our opinion, warrant putting such narrow construction upon it. This Court held In Gurcharan Siagh v. State of Punjab 1956 CriLJ827, that the burden of proving a plea specifically set up by an accused, which may absolve him from criminal liability, certainly lies upon him. It is different matter that the quantum of evidence by which he may succeed in discharging his burden of creating a reasonable belief, that circumstance absolving him from criminal liability may have existed, is lower than the burden resting upon to prosecution to the guilt of an accused beyond reasonable doubt. 27. It is evident from the above that the appellant has failed to establish a credible defense. The nature of injuries on the body of the deceased are consistent with medical jurisprudence regarding cases of strangulation, which opines that such cases, in addition to ligature marks or finger marks, there is a probability of evidence of struggle, and marks of violence on other parts of the body2. The presence of injuries on the body of the deceased is corroborated not only by the post mortem report EX.PW.6-A and EX.PW.6-B but also by the testimonies of PW1 and PW2. Though, in his statement under section 313 Cr.P.C., the appellant denied any such injuries on the body of the deceased on the night of the incident, however, the medical evidence of injuries are inexplicable from the purported plea of innocence by the appellant. It is a settled principle of law that in cases based solely on circumstantial evidence, there has to be a complete chain of circumstantial evidence pointing to the 2 BV Subhrahmanyam, Modi's Medical Jurisprudence & Toxicology, Page 268 (22nd Edition, 1999) Crl. A. 36/2015 Page 17 of 20 guilt of the accused. A succession of cases have laid down certain principles to be followed in cases of circumstantial evidence. They are: (i) The circumstances from which an inference of guilt is sought to be proved must be cogently or firmly established. (ii) The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. (iii) The circumstances taken cumulatively must 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 none else. (iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See: Shanti Devi v. State of Rajasthan, (2012) 12 SCC158; Hanumant v. State of Madhya Pradesh (1952) SCR1091(P.1097) and Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC116.

28. Regarding the recovery of the nylon rope, although PW1 has not corroborated the testimony of the IO, qua recovery of rope from the cabin at the instance of the appellant, the Trial Court considered it proved from her testimony that rope was recovered from the floor of the cabin in her presence. The Court further reasoned that the IO could not have recovered the rope without having received information from the appellant, therefore, the appellant had knowledge of the place where the rope was kept. In cases, when no eye witness is available, circumstantial evidence would have to be considered in view of the incriminating circumstances which are put to the Crl. A. 36/2015 Page 18 of 20 accused and no explanation is offered by him or if any explanation is offered, it is found to be untrue, then such circumstantial evidence becomes an additional link in the chain of circumstances to make the prosecution case complete. In Deonandan Mishra vs State of Bihar (1955) 2 SCR570the Supreme Court held:

"It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to Rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the Appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that

this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence."

(emphasis supplied) 29. The appellant and the deceased were the only two residents of the flat/ residential accommodation in question; there was a history of frequent quarrels between them because the appellant held the deceased responsible for his estrangement with his wife; there was no forced entry into the flat; the medical evidence testifies homicide due to strangulation; the nylon rope was recovered from the cabin adjacent to the scene of the crime; the telephone call by the appellant to his sister PW2 regarding the heated quarrel between him and the deceased minutes before the recorded time of death points to the presence of appellant with the deceased; in light of the contradictory statements from PW2 Crl. A. 36/2015 Page 19 of 20 and DW1 which were not challenged, the appellant has failed to provide a credible alibi proving his whereabouts during the time of the incident; there is no alibi nor is there any explanation of 15 other ante mortem injuries on the body of the deceased. In the circumstances, the circumstantial evidence against the appellant is cogent and the unbroken links unerringly point to the guilt of the accused/ appellant. Furthermore, there is no other explanation or hypothesis which could suggest the innocence of the accused/ appellant. In the circumstances, the finding of guilt arrived at in the impugned judgment cannot be said to suffer from infirmity.

30. In view of the preceding discussion, the Court is of the view that the findings arrived at in the impugned judgment do not warrant to be disturbed. In the circumstances, the appeal being without merit, is dismissed. SEPTEMBER26 2017 NAJMI WAZIRI, J SIDDHARTH MRIDUL, J Crl. A. 36/2015 Page 20 of 20