

Manoj Kumar Pandey Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-13-1998

Reported in : 1999CriLJ3013

Judge : S.K. Phaujdar and ;N.S. Gupta, JJ.

Acts : Indian Penal Code, 1860 - Sections 201 and 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 293, 294 and 313; [Evidence Act, 1872](#) - Sections 27

Appeal No. : Criminal Appeal No. 1084 of 1989

Appellant : Manoj Kumar Pandey

Respondent : State of U.P.

Advocate for Def. : K.C. Saxena, A.G.A.

Advocate for Pet/Ap. : D.N. Wali and ;Krishna Kapoor, Advs.

Disposition : Appeal dismissed

Judgement :

1. The present appellant stood convicted for an offence under Section 302, I.P.C. and had been sentenced to life imprisonment by an order of IVth Additional Sessions Judge, Saharanpur, dated 5-5-89 in Sessions Trial No. 144 of 1983. After presentation of the appeal the appellant was directed to be released on bail.

2. The appellant stood a charge for having killed his wife Usha Pandey in Room No. 17-A of Alka Hotel, Hardwar, in between 12 O'clock in the noon on 19-2-83 and 6.30 in the morning of 20-2-83. The prosecution case may be stated in brief as follows;

A man and a woman had come to the Alka Hotel, Hardwar, at about 6.00 a.m. on 19-2-83 and asked for a room. They were allotted Room No. 17-A. The key was handed over to the man and he was asked to make entries in the hotel register. The man entered his name as S.K. Pandey son of T.N. Pandey of Sector 5, Aakam Bag, Lucknow, and indicated the number of occupiers as two. They occupied the room, tea was offered to them in their room and the man and the woman went out for a stroll at about 9.00 a.m. to come back at 12. On that very day, at about 5.00 p.m., the man came to the hotel counter and asked about some washerman. The washerman of the hotel, namely, Ram Saran was present there. The man was having a plastic basket with him and he gave certain clothes for pressing to the washerman he also wanted that the washerman should wash a white kurta and deliver it back at 6.00 a.m. next morning. The washerman expressed his inability to do so and as such only the clothes for pressing were made over to the washerman with a direction to leave the pressed clothes at the counter which he would collect subsequently. The man left with the plastic basket and the white kurta and never come back. The next morning at about 6 or 6.30 the Hotel Manager asked Mahipal Gaurd to go to Room No. 17-A saying that the man of that room had not takes the pressed clothes. Mahipal came back and reported that room No. 17-A was locked from outside but the light was on inside. The Manager grew suspicious, called the bearers Chandan and Ashok and guard Mahipal and went to Room No. 17-A and found it locked. By force the door was pressed and through the small opening he peeped into the room and saw the woman, who had accompanied the man, lying face upward on the cot. Only her face was visible and the body was covered by a quilt up to the neck. Froth was found coming through the nose, she did not respond to call. The Manager suspected that the man who gave out his name as S.K. Pandey must have killed his woman associate. Accordingly, he lodged a re-port at the Kotwali Police Station, Hardwar, at about 8.00 p.m. and indicated all the above facts therein and claimed that he and the bearers and the washerman would be able to identify that

man. Upon this report of the Manager Bipul Ghosh, Case Crime No. 65 under Sections 302/201, I.P.C. was started and investigation was taken up.

3. During investigation police could find a tailor mark on a shirt that was given for pressing which was of a tailor at Fatehpur. The tailor was traced out and on the identification of the tailor the present appellant was apprehended and the identity of the deadbody was established, from the photographs taken of the deadbody, as that of Usha Pandey the wife of the appellant and the photographs were identified by the relations of the deceased. Investigation revealed that Manoj and Usha had stayed for a night in a hotel in Lucknow and than proceeded to Hardwar where Manoj had allegedly given a fake name and fake address but the entries were made by him and these writings were compared with an undisputed writing of Manoj by an expert who had opined that the writings were by the same man. Manoj was also put on a test identification parade wherein the hotel staff had identified him as the man who had occupied room No. 17-A under the pseudonym S.K. Pandey.

4. It was, however, the defence case that Usha was brought up in a city atmosphere at Meerut and was habituated to a luxurious life which Manoj could not offer to her in his village and Usha used to go to Meerut off and on. On this particular occasion when Usha had gone out of the house Manoj had searched for her, had gone to her father's place and finally was admitted to the hospital wherefrom he was arrested. It was stated that the entries in the hotel at Lucknow and Haridwar were subsequently obtained from him under force and coercion and Usha must have left with some other man and must have been killed by that man, not by Manoj.

5. To prove the charge against Manoj Kumar Pandey the prosecution examined P.W. 1 Bipul Ghosh the Manager of Alka Hotel, Haridwar, P.W. 2 Mohd. Nasnat, a tailor at Fatehpur, P.W. 3 Iqbal an employee in the tailoring shop of Hasnat, P.W. 4 Dr. M.S. Kuwar who had held the post-mortem on the unidentified deadbody found in Alka Hotel, P.W. 5 Ranvir Singh a constable who carried certain materials from Haridwar to Lucknow, P.W. 6 Shyam Behari, a brother of the deceased Usha, P.W. 7 and Govind Tewari who had identified photographs of the deceased as that

of Usha, P.W. 8 Ram Saran the washerman attached to Alka Hotel, Haridwar, P.W. 9 B.K. Pandey S.I. of police posted at police station Haridwar at the relevant time, P.W. 10 constable Balram Singh who had sworn his affidavit and was called for cross-examination, P.W. 11 constable Chandrabhan Singh who had also sworn his affidavit and was also called for cross-examination, P.W. 12 Vishnu Dayal the Head Moharrir at Haridwar police station, P.W. 13 Karanpal Singh a constable in Haridwar police station who had carried the deadbody for post-mortem examination, P.W. 14 Siya Ram an Executive Magistrate at Saharanpur at the relevant time who had conducted the test identification parade in which Manoj Kumar Pandey was allegedly identified by the hotel employees, P.W. 15 Awadhesh Kumar, hotel receptionist in Mohan Hotel, Lucknow, where Manoj and Usha had allegedly stayed, P.W. 16 constable Suresh Chandra Dixit at Fatehpur Police Station who proved certain general diary entries, P.W. 17 Dr. Satish Chandra Srivastava who admitted the accused-appellant Manoj Kumar Pandey in Fatehpur hospital on 20-2-83 for certain injuries, P.W. 18 constable Har Pal Singh who had proved Ext. No. 1 and other documents recorded at Haridwar police station on 20-2-83, P.W. 19 constable Janeshwar Kumar and P.W. 20 the Investigating Officer Sri D.P. Singh, the then Station Officer, Haridwar, Police Station.

6. The circumstances that were brought on record through prosecution evidence were put to the accused-appellant in his examination under Section 313, Cr.P.C. and in answer to questions at the last page of his examination he had stated that he was falsely implicated and the witnesses had spoken against him under pressure from police and when asked if he had anything more to say he proposed to file a written statement. This written statement filed by him on 24-4-89 is also on record wherein he made out the defence that Usha was of very fashionable attitude and had always been demanding luxury items from Manoj and often insisted for taking her to cinema. When her demand was not fulfilled she used to say that Manoj should leave her at Meerut where she would arrange for her clothes and cosmetics herself. She used to write letters and post them personally at the neighbouring post-office. When Manoj requested her to make over the letters to him, Usha used to retort saying that she was writing to her friends and her husband had no right to interfere. Manoj further stated in his defence, as per

the written statement, that on 17-2-83 when he came back after stroll he did not find Usha in the house. He asked everybody and all of them stated that she was just there. When she did not come back after a reasonable period, Manoj started a search for her. Next day he went to Malaka to his in-laws who disclosed that Usha might have gone to Meerut. Manoj came back home, waited for Usha and was deeply ashamed for the conduct of his wife. In frustration he started drinking. On 25-2-83 police arrested him from the hospital. He was brought to Kanpur. Police kept him there during the night and talked to the press people. Thereafter he was taken to Haridwar via Lucknow and finally to Saharanpur. During this period he was shown to the witnesses. His photographs were taken and he was forced to make certain entries on certain papers. He was not kept under cover (baparda).

7. The learned Counsel for the appellant highlighted the defects in the investigation to say that no dates were there in the several parchas in the case diary and at the time of making inquest no time was indicated as to when it started and when it ended. No investigation was made in the Lucknow address of S.K. Pandey as per the entries in the register of Alka Hotel. There is no reason, according to defence, for the non-production of the appellant up to 27-2-83 although he was arrested on 25-2-83 and there was no explanation as to why he was produced open faced before Sri Asthana of the Lucknow Hotel. It was further argued that it was a deliberate attempt on the part of the prosecution to rope in the husband of the deceased and it was a mere presumption that when the deceased was a married woman the husband must be the culprit, although no basis was there in evidence. The learned Counsel submitted that the loosesheets of the hotel entries for the hotel at Lucknow could not have been acted upon and the register allegedly kept at Alka Hotel was also not maintained properly and cross-examination of the P.W. 1 suggested that blanks were left against several serial numbers in the register making probable the theory of interpolation at a subsequent date. It was, contended that the claim of identification by the witnesses was tainted as not only the photographs of the accused appellant were shown to them but he was also personally shown to the witnesses. The learned Counsel further submitted that police had seized certain photographs of the deceased as also of the present appellant from the father's place of the deceased and the same were allowed to be published in newspapers and that had facilitated

identification of the complainant and these photographs, which were kept under a sealed cover, were never produced before the Court. It was further argued that the hotel-entry register of Alka Hotel, in which there were alleged entries made by the present appellant Manoj Kumar Pandey under a pseudonym S.K. Pandey, was marked as exhibit before the Court below and there were relevant cross-examinations regarding the mode of entries made therein and this register is not before the Court now. The Sessions Judge had replied in his letter that the register was sent to the High Court but the High Court office had not received it. Absence of this register, if it was submitted, would result in an inference against the prosecution. The learned Counsel also challenged the time of death of the woman in Alka Hotel to negative the theory of murder by Manoj Kumar even if he had entered the hotel at 6.00 a.m. on 19-2-83.

8. In a case of the present nature the starting point would be the discovery of a deadbody in the hotel room which was locked from the outside. There had been a male associate of the deceased woman. The two were seen together entering the hotel, coming out for, a stroll, coming back to their room at about 12 in the noon on 19-2-83. The male associate who had made entries in the register went out alone at about 5.00 p.m. and he left certain clothes with the washerman at the hotel counter in presence of others. He directed the washerman to press the clothes and leave them at the counter which he would collect after return. This male associate of the deceased never came back. The deceased was found almost in a naked condition lying on her bed with only a panty on. There was no sign of rape on her. There is no theory that any valuable was stolen. Certain bangles of silver colour were found on her forearm. The deadbody was of an average built young woman. There was a contusion on the right breast near the areola. There was another contusion with teeth mark, semi circular on medial aspect of the left thigh and a further contusion 1 cm below this teeth mark. There were abrasions present on the front and left side of trachea in the neck 3 cm above the medial end of left clavicle and on opening congestion was found below this injury and there was extravasation of blood into the subcutaneous tissues under this injury. The doctor P.W. 4 who held the post-mortem examination on this deadbody on 21-2-83 at 11.45 a.m. was of the view that the girl was aged about 20 years and death was caused within two days from the time of the post-mortem examination and death

had occurred due to asphyxia caused by throttling. The injury on the neck was sufficient in the ordinary course to cause death and it could have been done by strangulation. It according to him, could have occurred between noon of 19-2-83 and the morning of 20-2-83 and it was possible to have been caused at 5.00 p.m. on 19-2-83. There could be, according to him, a variation of 7 or 8 hours but he denied the possibility that death would have occurred at 4 to 5 a.m. on 19-2-83 although death was possible at about 6 a.m. She was in a position to offer the resistance at the time on being throttled and in a case of such resistance there was every possibility of the bangles being broken or twisted. His examination further discloses that the deceased must have taken meal 3 to 4 hours prior to her death. He discarded the possibility of strangulation by any material placed around the neck. The injuries, barring the one on the neck, could have been caused half an hour prior to the death.

9. From the nature of the position on the deadbody and the nature of injuries on the neck and on other portions of her body a clear suggestion comes out that she was in an intimate position with her male associate as would be evident from the teeth mark which would never be caused for the purpose of causing injury but could be an expression of lustful action. That the male and female had entered the room at about 12 noon and that the male had left at about 5 p.m. and never came back, suggest that the male associate of the deceased must have been the killer and this killing must have been caused from 12 to 5 p.m. on the fateful day and the medical evidence supports this proposition. The door of the room was locked from outside and this fact also suggests that the male associate did not want that the murder should be discovered soon. Throttling appears to have been caused when the young man and woman were on the bed in an intimate position and that may explain the absence of resistance. A bottle of liquor was there in the hands of the deceased but the post-mortem report does not suggest that she had taken liquor. It must have been, therefore, a handiwork of the assailant who had taken every care to place a bottle of wine in her hand and locked the door from outside. The only question that remains to be determined is the identity of this male associate as it is clear from the nature of the evidence that it was the male associate of the deceased who had murdered her.

10. At the time of the F.I.R. the deceased and the assailant were both unknown. The assailant however left two clues. He had signed on the record in his hand and he had left certain clothes for pressing by the washerman and incidently one of the clothes contained a tailor-mark of Fatehpur. This prompted the investigating agency to visit Fatehpur to trace out the owner of the shirt. Evidence against the present appellant may, therefore, be classified in the following categories and it is to be seen whether the evidence on each point was acceptable. Identification of the present appellant as male associate of the deceased was proposed to be established, firstly, through the shirt having a tailor-mark, the second point of identification is his alleged writings in the hotel register and the third is his alleged identification by the hotel employees in a test identification parade. The evidence on behalf of the prosecution is to be considered along with the conduct of the accused appellant as also his statement in 313, Cr.P.C. and his written statement which may be taken as a part of his statement under Section 313, Cr.P.C.

11. So far the clothes are concerned, the prosecution case was that the appellant left certain clothes for pressing by the washerman, P.W. 1 stated in paragraph 6 of his statement that at about 5.00 p.m. the appellant left certain clothes for pressing by Ram Saran washerman, a shirt was there in these clothes. The shirt was taken charge of by the police through a proper list which was proved and exhibited. This witness, however had not identified the shirt. Ram Saran P.W. 8 stated before the Court about these facts. He identified a chequered shirt with mark of Avon Tailor and other clothes in Court to say that these were made over to him by the accused appellant and were pressed by him. His deposition indicates that he was working as a washerman in the hotel for the service of the boarders. There was no specific cross-examination on the identity of the shirt except a general suggestion that no clothes were given to him for pressing. After giving back the clothes to the hotel counter he went back to his duty. The Investigating Officer P.W. 9, B.K. Pandey, stated about production of the pressed clothes before him by the Manager of Alka Hotel and he had prepared a production list. There is nothing in the evidence of these three witnesses to discard their testimony on the point that the male boarder on room No. 17-A had left the clothes including the shirt with Avon Tailor mark for pressing.

12. The other investigating Officer P.W. 20, Sri D.P. Singh, had gone to Fatehpur to trace out Avon Tailor. The photographs of the deceased was taken at the hotel itself prior to inquest as stated by P.W. 9 B.K. Pandey. This Investigating Officer D.P. Singh was having with him the photographs of the deceased also. When he had gone to Fatehpur he could locate the tailor and talked with the owner thereof and on the basis of certain statement made by an assistant in that tailoring shop and on his identification the Investigating Officer had gone to the house of the present appellant. The Investigating Officer claimed that the witness had identified the photographs of Manoj Kumar Pandey hanging on the wall but the witness himself does not say so. Subsequently Manoj was arrested from near the telephone exchange. Manoj made a statement to the police officer that he had tried to commit suicide and report was collected from the hospital concerning his treatment there. The owner of the Avon Tailor and the assistant in his shop were examined as- P.Ws. 2 and 3. It appears from the statement of P.W. 2 Mohd. Hasnat that the concerned shirt which was marked as an exhibit was stitched in his shop but he could not locate the owner thereof. His assistant Iqbal (P.W. 3) also supported the fact that the shirt was shown by police to him on 25-2-83 and he accepted that the shirt was tailored in that shop but in Court he has stated that he could not say who was the owner of that shirt. He was declared hostile on this point and his previous statement to the police was put to him which he had denied. He also denied to have identified Manoj from his photograph in the drawing room as the person who had got the shirt stitched.

13. The evidence of identification of the appellant through the shirt is, therefore, not established in Court. The evidence of the Investigating Officer is, however, relevant that he could reach the place of the accused appellant from the clues of the tailor mark. There is nothing on record to indicate, or even to suggest, that the police had any clue to know the identity of the girl and thereby to fix the identity of her husband. Thus intrinsic reliance must be given to the statement of the investigating officer that he could reach the house of the appellant nly through the tailor mark-in the shirt. It was contended on behalf of I he appellant that the Investigating Officer Sri D.P. Singh admitted that the photographs of the deceased that were taken before the inquest were sent to the press for publication on 21-2-83. But there is nothing on record to show that any such photograph was really

published, rather a newspaper had been brought on record to indicate that another photograph of the deceased and one of the appellant were published in a newspaper with certain story regarding the murder. This must have been after the arrest of the accused appellant and it may not, therefore, be stated that the identity of the girl was traced otherwise and her husband was dragged in thereafter. It may, however, be reiterated that to come to the house of the appellant was certainly an achievement for the investigating agency and it may not be doubted from the nature of the evidence. But the identity of the appellant was not established through the shirt and the prosecution must fall back upon other evidence to establish that it was the appellant who had been the male associate of the deceased. The next point of identification of the accused appellant has come through his writings in the hotel records at the relevant time. The appellant and Usha had allegedly stayed in Lucknow for two nights and had allegedly gone to Haridwar thereafter. The records of the hotel from the Lucknow are all of loose sheets but they are in printed form and not on blank papers. It is in the evidence of the person-in-charge, P.W. 15 Awashesh Kumar, that on 16-2-83 he was the manager-cum-receptionist in Mohan Hotel, Lucknow, and in his hotel boarders are permitted to enter after filling in guest entry form. Manoj and one woman whose name was entered as Usha, had come to the hotel on 16-2-83. The form was filled in by Manoj giving the names of both. He proved the guest entry form. His cross-examination discloses that Manoj was brought to him by the inspector at the time of his visit. His cross-examination indicates that the year of visit was not indicated although his evidence shows that it was in 1983. His cross-examination further discloses that in his hotel entries are made in loose sheets of guest entry forms only and there was no suggestion that the papers were manufactured or that he was required to maintain a register. P.W. 1 also spoke of entry in the register by the appellant but the name therein was noted as S.K. Pandey and the number of boarders against his room No. 17-A was shown as two. The writings in these two registers were compared along with admitted writings of Manoj Kumar Pandey by the hand writing expert and report was also submitted. This report, however, was not brought on record legally. This report was not admissible per se under Section 293, Cr.P.C. There is no material in the record to show that the report was tendered under Section 294, Cr.P.C. and was accepted as genuine. The Court

may not, therefore, rely on this report to give any weight to the opinion of the hand writing expert. However, in the circumstances of the case the opinion is only academic in nature as the defence does not dispute the writing on the records of Mohan Hotel, Lucknow and Alka Hotel, Haridwar, as that of the appellant Manoj Kumar Pandey. It was clearly the defence case that after his arrest Manoj was taken to Mohan Hotel and to Alka Hotel and entries were forced from him under the dictation of the police. Such suggestion however was not given to P.W. 15 and P.W. 1, thus we may start from the admitted position that the writings in the hotel records are in the hands of Manoj and if the defence theory in this respect is a probable one, certainly the prosecution case would be shaken. Concerning the papers of Mohan Hotel, it may be unusual for a hotel not to maintain a register of guests. But P.W. 15 has stated in clear terms that in his hotel only guest-entry forms were filled in. Had it been a case of preparation of the record at a subsequent stage at the instance of the police, then police would have taken steps to make a record which are maintained in the normal course and not loose sheets. Moreover, there is no reason why the Manager of Mohan Hotel would come to depose to oblige a police personnel and other police officers to implicate a person with whom he had no enmity, actual or suggested. So far the register of the Alka Hotel is concerned, unfortunately the register which was produced before the Court below and over which full length cross-examination was done, was not produced before this Court. It was contended that had the register been there it could be pointed out as to how the relevant entry allegedly made by Manoj Kumar Pandey in the name of S.K. Pandey was really inserted between two lines. The cross-examination of P.W. 1, however, suggests that against some serial in the hotel register cross marks were given and no entry was made as the boarders entering their names above such entries had crossed the lines and had come over to the next serial number. It was in cross-examination that against the entry touching the present appellant there were certain over writings although very minor. This again is to be tested from the facts and circumstances of the case, if at all it is a case of subsequent preparation of the record, police would have spared no pains to make it fool-proof. In such a case there would not have been any over writings however small. Again if at all it was a prepared document and if police prepared the document at Luck now with the real name of Manoj Kumar Pandey,

there is no reason why police would direct the accused to write his name as S.K. Pandey in this record and a fake address of Lucknow. Thus the defence theory that the entries in the hotel register were forced to be writing by him does not stand the test of probability and once writings are not disputed, this Court would take it that it was Manoj Kumar Pandey who wrote the papers in the two hotels and this fixes his identity as a visitor to the Mohan Hotel and Alka Hotel on the relevant dates along with a woman whose identity was disclosed in Mohan hotel as Usha Pandey and whose photographs taken at Alka Hotel were identified to be that of Usha Pandey, by her brother Shyam Behari Diwedi P.W. 6 as also by Bal Govind Tewari P.W. 7. The absence of the original register may not lead this Court to draw any adverse inference as the register was produced before the trial Court full cross-examination was done on that point and the materials gathered in cross-examination indicate that the genuineness of the entries could not be doubted.

14. Once it is accepted that Manoj Kumar had made these entries in the two hotels we get a track of events, Manoj and Usha stayed in Lucknow from 16-2-83 to 18-2-83 and on 19-2-83 they were at Haridwar. At Haridwar Manoj deliberately gave his name as S.K. Pandey and deliberately wrote an address of Lucknow, this only suggests that his intention was mala fide.

15. Next comes the question of identification by face in test identification parade by the hotel employees of Alka Hotel. This fact has come on record through P.W. 1 and P.W. 8 as also P.W. 14, P.W. 1 was the hotel manager Bipul Ghosh who had lodged the F.I.R. and had spoken about the entry made by S.K. Pandey. He also spoke of story on making over clothes to the washerman in his presence and of identification in test identification parade, P.W. 8 also gave an equal version, P.W. 14 Sri Siya Ram had been an Executive Magistrate at the relevant time and he had conducted the test identification parade in which P. Ws. 1 and 8 had identified the present appellant. His cross-examination indicates that initially the identification was to be held on 7-3-83 by another Magistrate but it was finally held by him. The Magistrates are deputed under orders of Superior Officials and it may not be a choice of any particular Magistrate to go and hold a test identification parade. Here absence of the specific order through which this Magistrate was directed to hold the test identification parade may not be a ground to question his

competence as official acts are normally to be presumed to have been done in the regular manner.

16. On the question of identification it was the consistent averments of the defence that he was shown to the witnesses and his photographs was also shown through publication in newspaper or otherwise. The investigating Officer denies this suggestion. There is an admission on the part of P.W. 15 that at Lucknow the accused was produced bare faced before him. It is quite possible that it was so done, but consistent evidence is there through the constables and the investigating Officer that at Haridwar he was produced before Court 'baparda' and was sent in that condition to jail. From the facts that the accused was not kept 'Baparda' at Lucknow may not lead us to disbelieve the consistent claim of all the other witnesses that at Haridwar he was kept baparda publication of his photograph in the newspaper was an act by the press over which police had no control and that may not vitiate the action taken by the police. The witness Bipul Ghosh and Ram Saran have stated that they saw the accused appellant in their hotel and thereafter only at the test identification parade and never in the meantime.

17. It was argued that Ram Saran washerman could have seen the appellant for a few minutes only while the transaction of alleged giving of clothes to him took place. It was contended that the F.I.R. did not say that Bipul Ghosh was there at the counter when the couple entered the hotel and they went out or came back and as such Bipul Ghosh also got the chance of looking to the appellant only once and it was too much for both these witnesses to have claimed the identification. Had it been normal case of stay of a guest in a hotel their memories would have faded but as it was connected with a sensational incident of murder in their hotel, it was possible for them to recollect the details of the visit of the couple and the other actions of the present appellant. The claim of identification in test identification parade may also be accepted. The evidence of identification of the appellant as the male associate of the deceased Usha is thus established by entries in the hotel register and by the ocular testimony of P.Ws. 1 and 2. Together with this we may look to the conduct of the accused as stated by him in his statement under Section 313, Cr.P.C. He and Usha had gone out definitely on 16-2-83 and stayed

at Lucknow. A one (sic) defence been taken that it was Usha who went out alone. If Usha had gone out alone then normally there should have been some report at the police station when she did not return after a reasonable time. In a village if a married lady deserts the house of her husband it would certainly create a ripple in the society and in the family. No report was made to police and the conduct of the accused as per his own case is that in shame and frustration he took drinking and was admitted to the hospital on 20-2-83. This was just the day following the day of murder. He allegedly made an attempt to commit suicide as per statement made by him to the police officer. The doctor's report was collected thereafter and the doctor has been examined here to say that there were marks of injuries on the neck of the present appellant. Thus it was a fact discovered on the basis of an information given by the accused to the police officer and it may be acted upon under Section 27 of the Indian Evidence Act. We may rely on this information at least on the point that the accused tried to commit suicide. Even it was not a case of suicide, then the injuries could be explained by the only other theory that the injuries were caused in an attempt of resistance by the deceased.

18. Much was stated by the learned defence counsel about the manner of investigation as the inquest was done without any time or case number, as no parcha in the case diary gave any dates and as the accused was not produced before a Court for two days from 25-2-83 to 27-2-83. The defects of the investigation may not always be fatal to the prosecution case unless from those defects an inference is suggested that a case has been concocted. Reliance was placed on a decision of the Supreme Court in the case of Meharaj Singh v. State of U.P. as reported in 1994 All Cri C 437 : 1994 All LJ 1032, in which infirmities were found in the prosecution case, F.I.R. was ante dated and unnatural conduct was there of the eye-witnesses. The Court observed that delay in lodging the F.I.R. suggested an embellishment, which was a creature of an after thought. One of the external checks to verify the truth of the F.I.R. is to see the receipt of copy thereof in the Court and sending a copy thereof and of the inquest report. In the instant case the deceased was unknown and so was the accused at the time of the lodging of the F.I.R. there could be no reason for ante-timing F.I.R. The absence of time of holding inquest is certainly an infirmity but it is not one which may take away the truth in the case as at the time of the inquest or at the time of

the F.I.R. no amount of deliberation or delay would have implicated any one at that, stage. Non-production of the accused within 24 hours before a Court was certainly an act not befitting a police officer. This infirmity might have been made the arrest illegal or the detention uncalled for, but could not have affected the investigation as it had not depended on this illegal detention. Absence of enquiry in the Lucknow address given by Manoj Kumar Pandey in the register of Alka Hotel is also not a factor to demolish the prosecution story. The police had two clues before it, one was the shirt tracing its owner to Fatehpur and the other the address of Lucknow noted in the register, per chance the first clue did yield result. There was, therefore, no necessity to chase the second clue.

19. In our view, the prosecution was able to bring home the charge against the accused appellant and he was rightly held guilty by the trial Court and the appellant was rightly convicted under Section 302, I.P.C. and was rightly sentenced by the Court below.

20. The appeal stands dismissed. The accused appellant who is on bail must surrender before the C.J.M. Saharanpur, to serve out the imprisonment. His bail bonds are cancelled. The C.J.M. Saharanpur, would take every necessary step to enforce the attendance of the accused appellant and to send him to custody to serve out the life imprisonment.