

Kuldip Sharma Vs. the State

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Court : Delhi

Decided On : Aug-04-1995

Reported in : 1996CriLJ244

Judge : J.B. Goel and; P.K. Bahri, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161 and 313; [Evidence Act, 1872](#) - Sections 8

Appeal No. : Criminal Appeal No. 83 of 1989

Appellant : Kuldip Sharma

Respondent : The State

Advocate for Def. : Mr. P.S. Sharma, Adv.

Advocate for Pet/Ap. : Mr. I.C. Kapoor, Adv

Judgement :

J.B. Goel, J.

1. The appellant Kuldip Sharma, s/o Sh. Vyas Dev Sharma has been convicted by an Additional Sessions Judge, New Delhi for offence under S. 302, IPC for having committed the murder of his wife Neelam on the night of 1-12-85 by strangulation, vide judgment dated 12-5-89 and vide separate order of sentence, he has been

sentenced to life imprisonment. Being aggrieved, he has come in appeal.

2. Briefly, the prosecution case is that the deceased Neelam along with her husband, the accused, had been living in a room on the 2nd Floor of Quarter No. 34C/1, Railway Colony, Punjabi Bagh. This was a Government flat having been allotted to one Satapal being an employee of the Railways. It consisted of 2 rooms, verandah one kitchen, bath etc. The said allottee had let out the said premises to one Rajender Prasad. Sh. Rajender Prasad along with his wife Smt. Chandra Kala (complainant) was living in one room, verandah and kitchen while other room had been let out to the accused where he and deceased, his wife, were living together.

3. However, the wife of the accused had been staying with her parents at Ambala for about 1 1/2 months before 27-11-85 when the accused brought her to Delhi in the house in question. Quarrel had taken place between the husband and wife on that day 2-3 times and he had also slapped her. In the night of 1-12-85, before going to sleep, a talk had taken place between the accused and Smt. Chander Kala, wife of Sh. Rajender Prasad, living in the other room, about the movie which Chander Kala had seen on the television elsewhere. After the talk, the accused and his wife had taken meal together and then went to sleep in their room. On the next morning Smt. Chander Kala, complainant woke up at about 7 a.m. and noticed that the main gate of her flat was lying open and at about 12 noon, she realized that Kuldip Sharma (accused) and his wife had not come out even to use the bath room whereas they generally used to get up in the morning. She had also not heard any voice from their side. She slightly opened their door and noticed that Neelam was lying in sleeping position on a Dewan. She called Neelam but there was no response. Only her mouth was visible and the other body was covered with quilt. She realised that she was dead and then she contacted her husband on telephone in his office who came at about 4.30 p.m. along with their landlord Sh. Satyapal s/o Sh. Badri Nath who was residing at J-116, Kirti Nagar. They also noticed that Neelam was dead and then gave information to the police.

4. On this information DD-16A was recorded. Copy of this DD was entrusted to SI Sh. L. D. Arora who visited the spot along with a constable and on inspection

found that Neelam was lying dead. Smt. Chander Kala gave her statement (Ex. PW 2/B) to the said S.I. who forwarded the same through constable Sh. Ranjit Singh at about 6.15 p.m. on 2-12-1985 with his endorsement and on the basis of this statement FIR No. 809 was recorded by duty officer at 6.30 p.m. DD 18A about the registration of the case was also recorded. Investigation was entrusted to S.L. Sh. L. D. Arora. Sh. Ravi Malik. SDM was summoned who prepared inquest report. The said S.I. prepared sketch site plan, got the scene photographed and sent the dead body for post-mortem through two constables. Post mortem was conducted by Dr. L. T. Ramani on 4-12-1985 at 11.15 a.m. he noticed the injuries on the dead body internal and external vide his report (Ex. PW 10/A). He had inter alias noticed that a georgette chunni was tied around middle of neck tightly with a single knot situated on the front of the neck with a deep ligature, constriction and brownish ligature mark 1' to 1.25' wide all around middle of neck horizontally. He had opined that the ligature mark was ante mortem caused by chunni present around the neck and the death was due to asphyxia resulting from strangulation. According to him the deceased had died about 60 hours earlier. From the body of the deceased, one gold ring, 2 silver bichuwa, one nose pin, 2 silver ear rings were seized by the said S.I. in sealed cover. The doctor has also preserved in a sealed cover shirt salwar, underwear and chunni of the deceased. The dead body, after post mortem examination was handed over to the parents of the deceased.

5. The accused was not found at his house in Delhi or at Ambala and at the addresses given by his father at Ambala. Later he was arrested on 4-12-1985 at New Delhi Railway Station. At the time of this arrest some injury marks were noticed on the person of the accused which were recorded by S.I. and he was got medically examined. The doctor had found some old dry abrasions marks over left posterior triangle which were opined to be more than 6 hours old. During the investigation inter alias statements of Sh. Om Prakash Bhardwaj, father of the deceased and his sister's husband Sh. Jaibal Joshi were recorded. In their statements they had alleged that the deceased had been visiting her parents and she had been complaining about the harassment by her in laws on account of insufficient dowry brought by her. They also stated that on 24-11-1985, the accused with his younger brother and his mother had visited her parent's house in

Ambala and made a demand of Rs. 10,000/- which her father could not pay. However, thereafter on 26-11-1985, the accused had taking the deceased with him to his house in Ambala and on 27-11-1985 brought her to Delhi. According to her father, the accused had killed his daughter on account of dowry demand. After completing the investigation, the accused was charged for offence under Section 302, IPC.

6. We have heard Sh. I. C. Kapoor, Advocate for the appellant, Sh. P. S. Sharma, Sr. Standing Counsel for State assisted by Sh. R. P. Kathuria with Sh. Vikas Bhalla, Advocate for the complainant. Certain facts which are not disputed and are also proved on record may be noticed before considering the contentions of counsel for the parties.

Place of occurrence

7. PW 5 Sh. Satapal has deposed that he was allottee of quarter No. 34C/1, Railway Colony, Punjabi Bagh, allotted by the Railway Department and that he had given the said quarter for residence to Shri Rajender Prasad. The accused was also living in that quarter. On being informed by Rajender Prasad about the death of Neelam, he had visited the said house and after the police reached there, he had gone inside the room where Neelam was lying dead covered with quilt and chunni tied around her neck. He was not cross-examined on this aspect. PW 9 Smt. Chander Kala, wife of aforesaid Sh. Rajender Prasad has deposed that Neelam, deceased, and her husband Kuldip Sharma used to live as their tenant in a room at quarter No. 34C/1 Railway Colony, Punjabi Bagh. After about 1 1/2 months stay with her parents, on 27-11-1985 she had come with the accused and was living in this house. She had a talk with the accused on previous night about a movie seen by them on that day. Thereafter after their taking meals, the accused and the deceased had gone to sleep in their room. There was no movement in their room till noon next day. Water was flowing from tap and they had not come to take water from that tap. She knocked at the door but there was no response. She felt suspicious called her husband and the allottee of the quarter.

8. On being informed by them, police reached at about 6 p.m. and pushed open the door and dead body of Neelam was found lying on a Diwan lying inside their

room. Her neck had been tied with a veil. She had made her statement Ex. PW 2/B to the police. (This is the statement on the basis of which FIR had been recorded). In cross-examination she stated that the flat was on second floor. They were in the possession of a room, verandha and a kitchen and the accused and his wife were living in the only other room. PW 14, S.I. Sh. L. D. Arora is the IO of the case and he has deposed that on 2-12-1985 while posted at PS Punjabi Bagh, copy of DD 16A (Ex. PW 2/A) was received by him and then he had gone to house No. 34C/1 Railway Colony, Punjabi Bagh along with a constable. Smt. Neelam Sharma was found lying dead in a room of this quarter on a wooden bed covered with a quilt and chunni tied around her neck and her face uncovered. At that time Smt. Chander Kala, her husband Rajender Prasad and landlord Satyapal were with him; and he had recorded the statement of Chander Kala (Ex. PW 2/B) and then, got FIR registered. Sh. Ravi Malik, SDM was called who had prepared inquest report (PW 15/B). In his presence he had also got the spot photographed and site plan (Ex. PW 14/D) was prepared by him, then had sent the dead body for post mortem. He was also not cross-examined on these facts. Ex. PW 14/D is the site plan of the second floor of the premises, showing the place in a room where the deceased was lying dead. The accused, under Section 313, Cr.P.C. had also admitted that he along with the deceased were living in that house for about 7-8 months. From this, it is proved that the place of occurrence was a room situated on second floor of this house and the deceased was found dead on a Diwan as shown in site plan Ex. PW 14/D with her body except face covered with a quilt.

Time and Cause of Death

9. As already noticed PW 9 Smt. Chander Kala has deposed that she had a talk with the accused on the previous night over a movie and thereafter, the accused and his wife after taking their meal had gone to sleep in their room; she had not noticed any movement in their room till noon next day and thereafter she had noticed the dead body lying in the room. Police had also visited there. After preparing the inquest report, the dead body was sent for post mortem and post mortem was done by Dr. L. T. Ramani, Civil Surgeon (PW 10) on 4-12-1985 at about 11.15 a.m. He had noticed inter alias the following external conditions :-

1. Mouth was partially open, tongue was in oral cavity, blood tinged, fluid was oozing out from nostrils and vagina, nails were blue, a georgette chunni, was tied around middle of the neck tightly with a single knot situated on the front of the neck, there was a deep ligature, constriction and a brownish ligature mark 11.25 wide present all around middle of neck horizontally. Internally he had noticed sub-cutaneous tissues (of the neck structure) under ligature showed effusion of blood, cornea of hyoid bone was fractured, tiny sub-mucous haemorrhage on epiglottis, lungs were congested and showed sub-pleural petachial haemorrhage, stomach contained 3-4 onz. of undigested food and whole rice could be identified. He has opined that ligature mark was ante mortem and was caused by chunni present around the neck. Death was due to asphyxia resulting from strangulation. He has proved his report Ex. PW 10/A. According to him time of death was 60 hours earlier. He was not cross-examined about these facts and his opinion. PW 9 and PW 5 as noticed earlier, have also deposed, that they had also noticed the deceased lying dead with chunni tied around her neck. This proves that the deceased Neelam had died an unnatural and non-accidental death and death was caused by strangulation. On the basis of the medical opinion, time of the death would be some time before mid night of the night intervening 1st and 2nd Dec. 1985. As opined by post mortem doctor (PW 10), the undigested food was found which showed that probably food was taken not more than one hour before her death.

10. Now the question is who is responsible for the death of the deceased. There is no suggestion put to the post mortem doctor that the injury could have been caused in an attempt to commit suicide. Post mortem doctor had noticed that the deceased was carrying a male fetus of about 12 weeks's size. There is apparently no material brought on record, nor it is suggested why the deceased would have committed suicide. Plea of alibi has been taken by the accused. PW 9 Smt. Chander Kala, as noticed earlier, has deposed that she had a talk with the accused on the night of occurrence about the movie seen by her on television and thereafter, the accused and the deceased, after taking their meal, had gone to sleep in their room. There was no third person with the couple. She has denied the suggestion that because the father of the accused was seriously ill and so his brother had taken the accused away and that he was not present there at the time

of the occurrence. Nothing has been shown that PW 9 had any enmity with the accused or any motive for falsely deposing against the interest of the accused. She is an independent and a natural witness and has deposed that the accused and the deceased were seen together by her on the night of the occurrence before they had gone to sleep together. In this respect, she is also corroborated by FIR (Ex. PW2/B) lodged by her and which does not show that she has lodged this report after confabulation with anyone. There is nothing brought on record to discredit her testimony in this respect.

11. The case set up by the accused was that he was not present at Delhi and had gone to Ambala to look after his ailing father. There is one circumstance brought in the statement of Smt. Chander Kala, PW 9, which if it is correct, may support the plea of alibi. However, this circumstance appears to have been introduced by PW 9 to help the accused. The circumstance stated by her is that; 'the door was bolted from inside' i.e. where the deceased was found. But she has further stated that; 'I knocked at the door but there was no response. I felt suspicious and called my husband and also the allottee of the quarter. We informed the police. The police came at about 6 p.m. The police pushed open the door.'

In cross-examination, she has further stated as under :-

'After giving information on telephone to my husband, I did not see the dead body of Neelam. I did not tell the police that I had seen the dead body of Neelam by opening the door a little before informing my husband. I have heard statement Ex. PW2/B wherein this fact is not so mentioned.'

12. There is apparently an error in recording this last sentence where she has been confronted with her statement Ex. PW 2/B. Her statement in this respect on translation is as under :-

'At about 12 noon, I thought that Kuldip and his wife have not come to the side of the bath room whereas they generally used to get up in the morning I knocked at the door but there was no response. I opened the door a little and saw that Neelam was sleeping on the plung, I called her but there was no response. Only a little part of her mouth was out of quilt. I thought that she was dead.'

13. Obviously she had made this statement in Court that the door was bolted from inside, contradictory to her statement made earlier in first information report (Ex. PW-2/B) and it casts, doubt in the statement made by her in Court on this point.

14. PW 5 Satpal had also visited the room of the deceased and he has stated that; 'I informed the police on telephone about this case. I then returned to that quarter. The police came there and we went inside that quarter. She was covered with a quilt and a dupatta was tied around her neck. She was lying dead.'

15. From this statement, the reasonable inference would be that the door, where the deceased was lying, was not bolted from inside. He was not cross-examined to say that the door was bolted from inside and was broken open.

16. PW 14, SI, Sh. L. D. Arora, IO, has deposed that when he had visited the house, Neelam Sharma was lying dead in the room of that quarter, she was lying on a wooden bed and covered with a quilt and a dupatta was tied around her neck and her mouth was uncovered, and in cross-examination, he has stated that;

'the door of the room in which Neelam Sharma was lying dead was neither bolted from inside nor latched from outside. Shutters were closed.'

17. He was not further cross-examined to discredit him on this aspect. There is no reason to disbelieve him in this respect.

18. PW 9, Smt. Chander Kala has also stated in Court that on that night, she had a talk with the accused before the accused and the deceased had gone to sleep. She has also denied the suggestion that the brother of the deceased had taken him away because of the illness of his father and so he was not present in the house at the time of this occurrence. When both the accused and the deceased were present in the room when they went to sleep, the deceased was found dead and the accused was not present inside the room, the door would not have been found bolted from inside. In the circumstances, PW 9 has made false statement to this effect and a reasonable inference is that she has done so to help the accused. This part of her statement, in the circumstances, is not trustworthy and cannot be believed.

19. PW. 11 Sh. Sumit Singh Jain, an officer from National Insurance Company has deposed that Kuldip Sharma, accused was also employed in his office, that on 28-11-1985 he had absented himself on 10.15 a.m. and that he had not filed any application to go away from office and had left without information and a note to that effect had been made in the attendance register. He had brought attendance register with him. In cross-examination, he has also stated that on 28-11-1985 the accused had come at about 10 a.m. and had marked his attendance. He had denied the suggestion that accused had given the application for leave to one Sh. P. P. Saxena, Assistant Divisional Manager. No steps have been taken to prove that the suggestion was trustworthy. The accused, in his statement under Section 313, Cr.P.C. has stated as under :-

'As a matter of fact I was on leave from my office and was at Ambala to look after my ailing father since 22-11-1985 up to 27-11-1985 and thereafter, I went to the office again, applied for leave and went back to Ambala as the condition of my father was deteriorating. My wife remained at Delhi.'

20. If he was to go on leave from 8-11-1985, there would be no occasion for him to mark his presence in the attendance register on 28-11-1985. If he had made an application for leave, there is no reason why such an application would have been withheld by the office and a note would be made in the attendance register that he was absent and had left without information. PW9, Smt. Chander Kala has deposed that Neelam had stayed with her parents for about 1-1/2 months and the accused had brought her with him to Delhi on 27-11-1985. She was not cross-examined on this aspect at all. If the father of the accused was seriously ill and the accused had remained with him from 22-11-1985 to 27-11-1985 and he was to go back to look after him to Ambala, there would be no valid reason for him to bring his wife on 27-11-1985 to Delhi and leaving her alone in his absence when the parents of the accused as well as of the deceased were residents of Ambala. She would have stated at her inlaws house in case her father-in-law was seriously ill or at her parent house. These circumstances belie the plea of alibi taken by the accused.

21. Accused has examined one Sh. Krishnamurthy DW 1 in his defense. He has deposed that he knew the father of the accused well and often visited him. He even has not stated if he had seen accused at Ambala during 28-11-1985 to 2-12-1985 nor that the father of the accused was seriously or even ill at that time. D.W. 2, Sh. Jaidip Sharma who is the brother of the accused has deposed that :

'In Nov. 1985 my father fell ill. On 22-11-1985 (?) had come to Ambala to meet his father. He stayed there till the night of 27-11-1985. My father improved and the accused returned to Ambala on 28-11-1985.'

22. There is apparent error in recording the name as 'Ambala' instead of 'Delhi'. He has not stated that he had come to Delhi to take the accused due to serious illness of his father though the suggestion was made to PW 9 to this effect. The stand taken by the accused to this effect is, thus, inconsistent and cannot be said to be bona fide and in the circumstances cannot be believed. The onus to establish alibi is on the accused and he has not lead any reliable evidence to show that he could not be present with the deceased during the night of occurrence. It is well settled that a plea of alibi must be proved with such probability so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence (State of Maharashtra v. Narsingh Rao, : 1984 CriLJ4). Such is not the case here. The plea of the learned counsel for the appellant that the accused was not present with the deceased before or at the time of occurrence, thus, has no merit.

23. Learned counsel for the appellant has contended that the allegations of demand or harrassment on account of dowry had not been proved. There was no motive and in the absence of motive no conviction can be based whereas learned counsel for the State has contended that the relations were not cordial and also there was demand and harrassment on account of dowry demand.

24. PW 8 Sh. Om Prakash Bhardwaj, father of the deceased has deposed that deceased, his daughter, was married to the accused on 10-9-1983 at Ambala and further stated that;

'She often visited me at Ambala and told me that accused had started harassing her and was complaining that dowry was insufficient. I told my daughter to adjust and this was order of the time that the demands were being made from the bride and her parents and I also told her that I will try to make the accused understand and see reason. On 27-10-1985 mother of the accused came and left Neelam at my house. On 24-11-1985 accused Kuldeep with his mother and younger brother came to our house at Ambala. Kuldeep and her mother stated that no dowry had been given and that they demanded Rs. 10,000/- to keep Neelam at their house. I told them that I had retired from the service in the year 1981 and had also spent money on the marriage of my son and he was not in a position to meet the demand, I had also spent money on the marriage of Neelam in the year 1983 and so had not money with me. I further told them that I shall pay the amount and meet the demand as soon as I was in a position to do so. My brother-in-law Sh. Jaipal Joshi had come on that day to my house. He also asked the accused to see reason. The accused persons had gone away when Sh. Jaipal Joshi had talked to them and had asked them to see reason.

On 26-11-1985 Kuldeep, accused, again came to our house and took away Neelam with him to his house at Ambala. He was also having a house at Ambala. He came to Delhi with Neelam on 27-11-1985

25. In his cross-examination, it is elicited that the deceased had written one or two letters to him but in those letters she had not made mention of harassment or of demand of dowry. And also that he had not stated in his statement under Section 161, Cr.P.C. made on 4-12-1985 that the demand of Rs. 10,000/- by accused and his mother on 24-11-1985 was made. It is also suggested that he had not made any report of demands or of harassment to the police.

26. It is also suggested to him that he did not tell the police that the mother-in-law of his daughter had left her at his house at Ambala on 27-10-1985. However, there is no specific challenge to the fact that the deceased had not lived at his house during 27-10-1985 to 26-11-1985 or that she had stayed at her matrimonial home at Ambala or with the accused at Delhi. In cross-examination, it is also not specifically disputed that the accused, his mother and brother had visited him (PW

8) on 24-11-1985 and rather it was elicited/clarified that they had visited him at 3 p.m. on that day. Thus, it is not specifically disputed that the accused, his mother and brother had visited the witness on that day. Simply because the deceased had not complained in her letter to her father about the harassment on account of dowry demand or insufficient dowry, would not necessarily mean that she would not have been harassed. If she had met her father and had told him orally during her visits to him then there will be no necessity of writing this fact in the letter to him. Also no parents of a daughter would like to report such demands of dowry or harassment on account of dowry to the police till complete break down in the matrimonial relations takes place which is not the case here. There is ring of truth in his statement to this effect.

27. The accused was employed and was living at Delhi. As admitted by him in the statement under Section 313 Cr.P.C., he was living in the house where the occurrence took place for the last 7-8 months. PW 9 Smt. Chander Kala who was occupying part of the same quarter has deposed that Neelam had stayed with her parents for about 1-1/2 months till 27-11-1985 when he brought her to Delhi. This fact was not disputed in her cross-examination. She had, thus, corroborated PW 8 to this effect. PW 9 has further deposed that the accused used to quarrel with his wife and once he had slapped her. She has denied the suggestion to the contrary put to her. She has again reasserted in cross-examination that quarrel had taken place 2-3 times on 27-11-1985 and the deceased had come with the accused to Delhi on 27-11-1985. What could be the reason for this quarrel and disharmony If the reason was something else, it was in the knowledge of the accused himself which has not been suggested or proved. The inference is that there was no smooth between this couple and the reason obviously was harassment either due to demand of dowry or being unsatisfied with the dowry already presented to her, as deposed by PW 8 and obviously, the expectations of demand of the accused and his relations remained unsatisfied and thereby resulting in frustration and so it would be the motive to get rid of the deceased. It may also be mentioned that there is no apparent reason brought on the record as to why the deceased had to live for a long time at her parents house especially when it is stated that her father in law was seriously ill at Ambala and the accused was staying alone at Delhi. The accused had brought the deceased to Delhi on 27-11-1985 and on the same day

he had quarrelled with the deceased 2-3 times, as stated by PW 9. Though PW 9 has also deposed that the relations between the couple were cordial before 27-11-85, however, as stated by this witness, the wife had lived out of Delhi for the last about 1-1/2 months before that and as such she would not be knowing if they were having cordial relations during that period and the circumstances under which the deceased had to live at her parents house for a long time. The reasons for this having not been explained, it cannot be taken that the relations were normal between the husband and the deceased.

28. The deceased was married to the accused hardly two years ago. No other reason is apparent nor suggested nor any material brought on record if the deceased would have committed suicide. There is no suggestion to the post mortem doctor also that the injury noticed had been caused in an attempt to commit suicide. The post mortem doctor has noticed that the deceased was carrying a male fetus of about 12 week's size. This would not have prompted her to end her life. The deceased was found covered with a quilt with only her face uncovered. PW 5 Satpal has deposed that the deceased was lying dead covered with a quilt. PW 14 has deposed that on reaching the spot, he had found the deceased lying dead on a wooden bed and was covered with a quilt and her face was uncovered. If the deceased had committed suicide she would not have covered herself except her face only with quilt. Obviously, she had been so covered by someone else and he would be no other than the accused who was with her. This circumstance alone will eliminate the possibility of the death being a suicidal one.

29. It is also noticed that the occurrence had taken place on the night of 1-12-1985. The accused was arrested on 4-12-1985 as deposed by IO (PW 14), PW 14 had noticed injury mark on his person and so sent him for medical examination vide Ex. PW 14F. Dr. J. Mahapatra, PW 12 had examined him on 4-12-1985 itself at 3.35 p.m. He had examined him vide Ex. PW 12/A and he had stated that he had found an old dry abrasion 3 cm. x 1 cm. long on the left side of the neck. The age of this injury is opined to be more than 6 hours. In cross-examination, he has stated that this injury could be 24 hours old or even more than 24 hours. Two suggestions have been put to him about the possible cause of this injury as under

:-

Question : Can this injury be caused with a friendly hand ?

Answer : Yes, with the intention to cause an injury.

Question : Was such an injury possible by fall?

Answer : Yes, it can be so possible.

It is within the knowledge of the accused how it was caused. In his statement under Section 313 Cr.P.C. he has explained as under :

'As a matter of fact, I was manhandled and beaten by the police at the PS and that is why I sustained those injuries.'

30. This Explanationn is inconsistent with the two suggestions put to the doctor PW 12 and obviously this Explanationn is not bona fide and is an after-thought. According to him, he was arrested on 3-12-1985 from his house at Ambala. He has also examined two witnesses to prove the time, date and place of arrest. S.I. Sh. Arora, IO PW 14 had deposed that he had arrested him on 4-12-1985 from New Delhi Railway Station and his personal memo Ex. PW 14/E was prepared by him. The only suggestion put to him in this respect is that he had brought the accused from his house at Ambala but there is no suggestion about the day of his arrest. There is also no suggestion put to him that any beating was given by him to the accused. In the absence of any such suggestion about the injury having been caused by beating to the doctor PW 12 and to IO PW 14, the plea of beating is not bona fide and cannot be believed. In the absence of any other material or Explanationn to the contrary, in all probability this has been caused to the accused by the deceased in scuffle at the time of her strangulation. The finding of the learned trial Court in this respect is not unreasonable or unjustified and cannot be interfered with.

31. The occurrence had taken place sometime during night of 1/2-12-1985. The accused was found absent from his house next morning. He was absconding after the occurrence. Learned counsel for the appellant has contended that the mere

fact of absconding or having been last seen together, is not incriminating circumstance justifying conviction. For this, he has relied on State of Rajasthan v. Smt. Kamala, : 1991 CriLJ602 , Inderjit Singh v. State of Punjab, : 1991 CriLJ2191 , Satish Kumar v. State 1994 (4) CCR 2579 (Bombay) and Lakhanpal v. State of Madhya Pradesh : 1979 CriLJ1217 . In these cases, except the evidence of last seen together or absconding, no other circumstantial evidence was proved or found reliable and trustworthy to form a chain of circumstances complete enough to base conviction. The conduct of the accused soon after the incident plays an important part in the determination of the guilt and is a corroborative piece of evidence. Disappearance of the accused after the occurrence is a relevant circumstance which in the absence of any plausible Explanationn, could be taken into consideration against him as conduct under Section 8 of the Indian Evidence Act. In the present case, firstly, there is no material on the record to show why the deceased would have committed suicide. The accused was present at the time of the occurrence and if it was a case of suicide, there is no material brought on the record to show that the accused had taken any steps either to prevent her from so doing or get her medical aid immediately. As a normal human conduct on the death of a near kith and kin, one laments and would raise hue and cry and even take assistance and counsel from the neighbours and the accused had cordial relations with his immediate neighbours. Instead of doing so, he had slipped away and remained absconding for several days. This conduct certainly destroys presumption of innocence on his part.

32. Learned trial Court has noticed most of these incriminating circumstances, found against the accused. The circumstances, as discussed above are as under :-

1. The deceased was married to the accused on 10-9-1983.
2. The deceased and the accused alone were last living together in a single room accommodation on second floor forming, part of railway quarter No. 34C/1, Railway Colony, Punjabi Bagh.
3. They were last seen together soon before they went to sleep by PW 9 on the night of occurrence i.e. 1/2-12-1985. PW 9 was living in other part of the same

quarter having a single main gate.

4. The deceased was found dead, with chunni (Ex. P1) tied around her neck, next day with ligature mark.

5. As per medical evidence, she had died due to asphyxia resulting from strangulation caused with Chunni (Ex. P-1).

6. As per medical evidence, the deceased had died after about one hour of taking her meal on the night of 1/2-12-1985 and sometime probably before midnight.

7. The dead body was noticed next day which was covered with a quilt with her face only uncovered.

8. The relations between the accused and the deceased were not cordial and harmonious. He used to harass her because of demand of dowry or dissatisfaction about the dowry presented to her on her marriage and his expectations remained unsatisfied.

9. The accused was found missing from the place of occurrence next morning and remained absconding, for 2-3 days after occurrence till he was arrested on 4-12-1985.

10. At the time of his arrest, an old dry injury (3 cm. x 1 cm.) was found on his neck which remained unexplained. This injury, in all probability, would have been caused at the time of occurrence in a scuffle by the deceased at time of her strangulation.

33. These circumstances, in our opinion, clearly point to the conclusion that it was the accused and none else who was responsible for the murder of deceased Neelam.

34. For the reasons given above, the finding of conviction given by the learned trial Court is reasonable and justified and we do not find any reason to interfere in the same. This finding is upheld.

35. In the result, we find no merit in this appeal and the same is hereby dismissed.

36. The appellant is on bail. His bail bond is hereby cancelled. He shall surrender forthwith to serve the sentence awarded to him by the learned Additional Sessions Judge.

37. Appeal dismissed.

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