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Sanjay Anand Vs. State

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SooperKanoon Citation : sooperkanoon.com/848569

Court : Delhi

Decided On : Mar-23-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Evidence Act - Sections 60, 106 and 114; ;Indian Penal Code (IPC) - Sections 34, 302, 304B and 498A; ;Code of Criminal Procedure (CrPC) - Sections 157, 162, 162(2) and 313

Appeal No. : Crl. A. 861/2004

Appellant : Sanjay Anand

Respondent : State

Advocate for Def. : M.N. Dudeja, Adv.

Advocate for Pet/Ap. : Rajeev Gaur Naseem, Adv

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. Process of criminal law was set into motion when at around 08.30 A.M. on 19.05.2002 the duty officer at PS Hari Nagar noted vide daily diary entry Ex.PW-2/B, that one Sharwan Kumar PW-2, came to the police station and stated that on

12.12.199 1 the marriage of his daughter Reetu (herein after referred to as the 'Deceased') was solemnized with the appellant Sanjay Anand S/o Sh. Anand Kishor Anand R/o D-75 DTC Colony Hari Nagar as per Hindu rites and ceremonies. Yesterday i.e. 18.05.1992 accompanied by her husband the deceased had come to his house. The deceased was fit and fine at that time and that she returned to her matrimonial house at about 06.00 P.M. Today at about 05.30 A.M. they received a telephone call informing that the deceased has suddenly fallen sick and that her ECG is being conducted at DDU Hospital. When they reached DDU Hospital they could not find anyone there upon which they went to the matrimonial house of the deceased where he found that the deceased had died. He suspects some foul play in the death of the deceased.

2. A copy of the aforesaid DD entry was handed over to SI Ranbir Singh PW-3, for investigation, upon which accompanied by HC Joy Thomas PW-6 he proceeded to the matrimonial house of the deceased where he saw that the deceased was lying dead on a bed kept in one room of the house. He summoned another police officer and gave information to the office of the Sub Divisional Magistrate. After sometime SI Sardar Singh PW-5 and K.K. Mahajan PW-13, Sub-Divisional Magistrate, also arrived at the house. K.K. Mahajan PW-13, recorded the statements Ex.PW-1/A and Ex.PW-2/A of Ram Piari PW-1 and Sharwan Kumar PW-2 respectively; the parents of the deceased.

3. In their statements the parents of the deceased informed that the marriage of their daughter was solemnized on 12.12.1991 and that she used to complain of being troubled by her husband. On 11th April they had to bring their daughter to their house as she was troubled in their matrimonial house and returned after a week after her in-laws assured of her wellbeing. That till last evening their daughter was in good health and only in the morning were they informed that her condition had deteriorated. The mother of the deceased additionally informed that the health of the husband of the deceased was not too good.

4. The FIR Ex.PW-5/A was registered on the basis of the statement Ex.PW-2/A of Sharwan Kumar, the father of the deceased.

5. SI Sardar Singh PW-5, prepared the rough site plan Ex.PW-5/B of the matrimonial house of the deceased; recording therein at point 'A' the room where the deceased used to sleep and was found dead.

6. The body was seized and sent to the mortuary where on 20.05.2002 at about 10.00 A.M. Dr. L.T. Ramani PW-4, conducted the post-mortem and prepared the post-mortem report Ex.PW-4/A. The relevant portion of the post-mortem report Ex.PW-4/A of the deceased reads as under:.Face is congested. There is marbling of skin of neck and shoulders.... Eyes are closed, sub conjuctival haemorrhage seen in both eyes, lips are blue

External Injuries: 1. Bruise 1 cm x 1 cm on the lower lip rt side cutaneous surface

2. Bruise 3 cm x 2 cm on the rt angle of mandible

3. Bruise 3 cm x 2 cm on the rt side front of neck middle part

4. Faint ligature impression on the upper part front and side of neck between angle of mandible. The ligature impression 1 to 1.5 cm wide, margins are ill defined. There is no ligature mark on the back of the neck.

5. Bruise 2 cm x 2 cm on the back of left arm middle part

6. Bruise 2 cm x 2 cm on the back of rt arm middle

7. Abrasion 1 cm x 0.2 cm on the dorsum of rt foot Internal examination.brain - congested

Neck tissues: show effusion of blood in superficial layers under ligature mark and also on the rt side front of neck and rt angle of mandible beneath bruises. Hyoid bone and thyroid cartilage are however intact. There is congestion of laryngeal mucosa with evidence of sub-mucus petechiae

Chest - Ribs are intact, lungs- congested and show sub pleural petechiae....

Opinion: All injuries are antemortem. Ligature impression is caused by some soft ligature. All other injuries are caused by blunt force application. Pressure on the

neck structure is sufficient to cause death in ordinary course of nature.

Death is due to Asphyxia resulting from strangulation

Time since death - About 30 hrs....

7. Since the needle of suspicion was pointing towards the appellant, the police arrested him. The appellant was taken to DDU Hospital where Dr. V.K. Gupta PW-16, conducted the medical examination of the appellant and prepared the MLC Ex.PW-16/A recording therein that he saw a small abrasion about half centimetre with dry scab formation on right temple of the appellant and that the said injury was sustained by the appellant about two-three days prior to the conduct of his medical examination.

8. On 20.05.1992 SI Sardar Singh PW-5, obtained the letter Ex.P-1 stated to be written by the deceased to her parents from the father of the deceased and seized the same vide memo Ex.PW-5/C. Relevant would it be to note that the letter Ex.P-1 reads as under:

Dear Mummy and Papa Ji

Since the day I have been married I am not treated properly in the house and someone is always quarrelling with me. Sometimes they say something and sometimes they something due to which I am very troubled. You tell me what I should do.

Your Daughter

Reetu' (Translated Version)

9. On 15.06.1992 SI Sardar Singh PW-5, obtained an application Ex.PW-5/D containing the admitted handwriting of the deceased from the father of the deceased and seized the same vide memo Ex.PW-5/D.

10. On 03.08.1992 Inspector Devinder Singh PW-12, prepared the site plan to scale Ex.PW-12/A of the matrimonial house of the deceased at the instance of ASI Ranbir Singh PW3.

11. The documents Ex.P-1 and Ex.PW-5/D seized during the investigation were sent to Central Forensic Science Laboratory. Vide CFSL report Ex.PX it was opined that the documents Ex.P1 and Ex.PW-5/D are penned by the same person.

12. Armed with the statements Ex.PW-1/A and Ex.PW-2/A of the parents of the deceased, the post-mortem report Ex.PW4/A of the deceased and the CFSL report Ex.PX, the police filed a charge sheet against Sanjay Anand, Nand Kishore, Chander Mohini and Rajiv @ Dimpy, the husband, father-in-law, mother- in-law and brother-in-law of the deceased respectively, accusing them of committing offences punishable under Sections 304B and 498A IPC read with Section 34 IPC. Accordingly, learned Trial Court framed charges against the aforesaid persons for having committed offences punishable under Sections 304B and 498A IPC read with Section 34 IPC.

13. The edifice of the case of the prosecution against the accused persons was built upon the testimony of the parents who deposed that their daughter was harassed on account of dowry by her in-laws and her husband as also on the fact that the death of the deceased was not a natural death and the same was within 7 years of her marriage.

14. Vide judgment dated 01.11.1994 the learned Trial Court acquitted the accused on the ground that the evidence of the parents of the deceased that the accused persons used to harass the deceased for dowry cannot be believed as the said allegations do not find a mention in their earlier statements Ex.PW-1/A and Ex.PW-2/A recorded by the Magistrate and thus the ingredients of Section 304B IPC and 'cruelty' as defined under Clause (b) of Explanation to Section 498A IPC are not fulfilled. Thus, notwithstanding the fact that a finding was returned that the death of the deceased was homicidal, all accused were acquitted.

15. Aggrieved by the judgment dated 01.11.1994 passed by the learned Trial Court, the father of the deceased filed a Revision Petition No. 37/1995 before this Court challenging the acquittal of the accused. Vide order dated 27.09.2001 this Court held that the death being homicidal and in the matrimonial house of the deceased the appellant had to explain as to how his wife died and thus upholding the judgment and order dated 01.11.1994 qua the in-laws of the deceased it was

directed that a charge for the offence punishable under Section 302 IPC be framed against the appellant and he be tried for said offence. The relevant portion of the order dated 27.09.2001 reads as under:

I have heard learned Counsel for the parties. Having carefully analysed the facts of the case, I am of the view that in a relationship such as those between the deceased and accused No. 1, Sanjay Anand, namely the husband and wife and the wife being strangulated in the bedroom of the house, unless the husband gives a plausible explanation of his not being there, presumption under Section 114 of the Act ought to have been drawn. Further since the deceased was strangulated in the bedroom, in the marital home, special knowledge could be attributed to the husband and it was for the husband to explain as to how and under what circumstances she was strangulated.

The prosecution, it appears has discharged their burden of showing the presence of the husband in the house at or around 05.30 am when he made a telephone call to the father of the deceased.

16. At the retrial, the prosecution examined 17 witnesses.

17. Ram Piari PW-1 and Sharwan Kumar PW-2, the parents of the deceased, deposed on the lines of their statements Ex.PW-1/A and Ex.PW-2/A recorded by the Magistrate. Additionally, Sharwan Kumar PW-2, the father of the deceased, deposed that the letter Ex.P-1 was written by the deceased to him and his wife and that he received the same on 30.04.1992 or 01.05.1992. On 18.05.1992 when the deceased came to his house she told him that the appellant is demanding a sum of Rs. 1,000/-, a cooler and two pairs of clothes. It may be noted here that neither any question was put nor any suggestion was given by the defence to the witnesses regarding the telephone call received by her from the appellant in the morning of the day of the death of the deceased i.e. 19.05.1992. It may further be noted that the defence gave suggestions to the witnesses to the effect that the deceased had committed suicide as she was depressed on account of the fact that the appellant was physically weak, which suggestions were denied by the witnesses.

18. SI Ranbir Singh PW-3, deposed that on receiving the information about the death of the deceased he went to the matrimonial house of the deceased where he saw that the deceased was lying dead on a bed kept in her bedroom. SI Sardar Singh PW-5, deposed that the rough site plan Ex.PW5/B of the matrimonial house of the deceased was prepared by him. The witnesses were not subjected to any cross- examination by the defence.

19. Dr. L.T. Ramani PW-4, deposed that the post-mortem Ex.PW-4/A was prepared by him. Save and except giving a suggestion to the witness to the effect that the findings given by him in the report Ex.PW-4 are incorrect, the defence did not put any question or give any suggestion to the witness.

20. Pawan Kumar PW-9, the maternal uncle of the deceased, deposed that on one occasion the deceased accompanied by the appellant and her in-laws visited his house and told him that she is being harassed and beaten up by her in-laws.

21. In his examination under Section 313 Cr.P.C. save and except admitting the facts that the marriage between him and the deceased was solemnized on 12.12.1991; that he and the deceased visited the parental house of the deceased on 18.05.1992; that he informed the parents of the deceased over telephone that the deceased is unwell at about 05.30 A.M. on 19.05.1992 and that the deceased died in her matrimonial house, the appellant denied everything.

22. With regard to the explanation for the death of the deceased, the appellant stated as under:

I am absolutely innocent and I have been falsely implicated in the present case. At the time of the incident I was working in a private firm when I reached my home in the morning at about 5.30 a.m. on the day of the incident after finishing my duty I found my wife fully unconscious on the bed. I immediately informed my in-laws.

23. Vide judgment and order dated 17.09.2004 the learned Trial Court held the appellant guilty of committing the murder of the deceased. It has been held that in view of the facts that the prosecution was able to establish that the death of the deceased took place in her bedroom in her matrimonial house around the time

when the appellant was present in the said house; that the relations between the deceased and the appellant were strained; that the appellant had misled the parents of the deceased and that the injuries which were recent in nature were found on the person of the appellant, Section 106 of Evidence Act made it incumbent upon the appellant to explain as to how the deceased died a homicidal death as also how the deceased sustained injuries found on her person and the fact that the appellant did not furnish a satisfactory explanation in respect of aforesaid circumstances is a clear pointer to the fact that the appellant committed the murder of the deceased. Vide order dated 18.09.2004 learned Trial Court sentenced the appellant to undergo imprisonment for life and pay a fine in sum of Rs. 500/- for committing offence punishable under Section 302 IPC; in default to undergo simple imprisonment for a period of 15 days.

24. During the hearing of the present appeal, following 7 submissions were advanced by the learned Counsel for the appellant:

A The first submission advanced by the learned Counsel was predicated upon the post-mortem report Ex.PW-4/A of the deceased and Modi's Medical Jurisprudence and Toxicology. Counsel submitted that as per Modi's 'Medical Jurisprudence and Toxicology' in case of strangulation the ligature mark found on the neck of the victim is continuous and encircles the neck horizontally and completely; that the ligature mark is placed low down in the neck and that the hyoid bone and thyroid cartilage are often found fractured while in case of hanging the ligature mark found on the neck of the victim is non-continuous and is interrupted at the back; that the ligature mark is placed high up in the neck and that the hyoid bone and thyroid cartilage is rarely found to be fractured. In the backdrop of aforesaid literature, counsel drew attention of the court to the post-mortem report Ex.PW-4/A of the deceased. Counsel pointed out that the same records that the ligature mark found on the neck of the deceased was placed in the upper part of the neck of the deceased; that no ligature mark was found on the back of the neck of the deceased and that hyoid bone and thyroid cartilage was found to be intact. Counsel submitted that the aforesaid three facts are strongly suggestive of the fact that the deceased committed suicide by hanging herself and negates the case of the prosecution that the cause of death of the deceased was strangulation.

B The second submission advanced by the learned Counsel for the appellant pertained to the relations between the appellant and the deceased. Counsel highlighted that the parents of the deceased stated that the deceased was happy at the time when she and the appellant visited them on 18.05.1992 in their statements Ex.PW-1/A and Ex.PW-2/A recorded by the Magistrate and that no particular allegations were levelled by the deceased against the appellant in her letter Ex.P-1. Learned Counsel submitted that the fact that the appellant and the deceased together visited the parental house of the deceased a day prior showed that everything was normal.

C The third submission advanced by the learned Counsel for the appellant was that the conduct of the appellant in informing the parents of the deceased about the ill-health of the deceased goes a long way in suggesting that the appellant was not the perpetrator of the crime of the murder of the deceased. According to the counsel, had the appellant murdered the deceased, he would not have himself immediately informed the parents of the deceased about the ill-health of the deceased, on the contrary he would have attempted to conceal the death of the deceased from her parents and would have quietly cremated the deceased.

D The fourth submission advanced by the learned Counsel for the appellant was predicated upon the MLC Ex.PW-16/A of the appellant. It was submitted by the learned Counsel that the finding returned by the learned Trial Court that the fact that the 'injuries' found on the person of the appellant were recent in nature is incriminating against the appellant is contrary to the MLC Ex.PW-16/A dated 19.05.1992 which records that only one injury was found on the person of the appellant and that the same was sustained by the appellant two-three days prior to the conduct of his medical examination.

E The fifth submission advanced by the learned Counsel for the appellant was predicated upon the testimony of SI Ranbir Singh PW-3 and the rough site plan Ex.PW-5/B of the matrimonial house of the deceased prepared by SI Sardar Singh PW-5. Counsel submitted that this Court while adjudicating the revision petition filed by the father of the deceased as also the learned Trial Court have committed an illegality in holding that the deceased died in her bedroom in the matrimonial

house; for the prosecution has not led any evidence establishing the same. Counsel pointed out that in reaching the conclusion that the deceased died in her bedroom in her matrimonial house, the learned Trial Court relied upon the testimony of SI Ranbir Singh PW-3, that the deceased was found dead in her bedroom and that the rough site plan Ex.PW5/B prepared by SI Sardar Singh PW-5, records that point 'A' is the bedroom of the deceased where the deceased was found dead and the fact that the testimony of SI Ranbir Singh and SI Sardar Singh was not controverted by the defence. With regard to the testimony of SI Ranbir Singh, learned Counsel submitted that the said testimony could not have been admitted in evidence as the same was hearsay for the reason the same was not based upon his personal knowledge but on the knowledge derived by him from some person. With regard to the site plan Ex.PW-5/B, learned Counsel submitted that the site plan Ex.PW-5/B insofar it records that point A is the bedroom of the deceased is inadmissible in evidence in view of Section 162 Cr.P.C. as SI Sardar Singh would have marked point 'A' as the bedroom of the deceased based upon the statements of the witnesses for he had no personal knowledge about the same. Counsel further submitted that an inadmissible piece of evidence does not become admissible on the ground that the defence did not cross-examine the witness in respect of inadmissible piece of evidence. Counsel lastly submitted that there is a material contradiction between the site plan Ex.PW-5/B and the site plan to scale Ex.PW-12/A regarding the place of death of the deceased which casts a serious cloud on the case of the prosecution that the deceased died in her bedroom in her matrimonial house.

F The sixth submission advanced by the learned Counsel for the appellant was predicated upon Section 106 of the Evidence Act. It was submitted by the counsel that it is settled legal position that Section 106 of Evidence Act does not abrogate the well established rule of criminal law that except in very exceptional classes of cases the burden that lies on prosecution to prove its case never shifts and that Section 106 is not intended to relieve the prosecution of that burden. It is not sufficient for the prosecution to establish facts which only give rise to a suspicion and then by reason of Section 106, throw the onus upon the accused to prove his innocence. Counsel argued that in the instant case, not even an iota of evidence was led by the prosecution to establish that the appellant is the perpetrator of the

crime of the murder of the deceased and in this view of the matter the learned Trial Court committed an illegality in invoking Section 106 of Evidence Act to infer the guilt of the appellants. In support of the said argument, great reliance was placed by the counsel on the decision reported as Dasari Siva Prasad Reddy v. The Public Prosecutor, High Court of A.P. : AIR 2004 SC 4383 and Siddaiah @ Sundi v. State of Karnataka : JT 2002 (6) SC 477.

G The last submission advanced by the learned Counsel for the appellant was that it is settled legal position that in order to convict an accused on the basis of circumstantial evidence, the chain of the circumstances appearing against him should not be consistent with any other hypothesis except the guilt of the accused. Counsel pointed out that in the present case the house in question where the deceased was found dead was not only occupied by the appellant but also by the parents and the brother of the deceased. Counsel highlighted that all the aforesaid four persons used to harass the deceased as deposed by the parents of the deceased. Counsel submitted that in that view of the facts that all the four occupants of the house where the deceased was found dead had a motive and opportunity to murder the deceased, it cannot be said with certainty that which of the four occupants committed the murder of the deceased and thus the appellant is entitled to the benefit of doubt.

25. Whether Dr. L.T. Ramani PW-4, erred in concluding that the death of the deceased was caused by strangulation? Whether the defence is correct in contending that the deceased committed suicide by hanging herself?

26. With regard to strangulation, the relevant portion contained in Modi's 'Medical Jurisprudence and Toxicology' reads as under:

'STRANGULATION

Post-mortem Appearance

Post-mortem appearances are external and internal.

(i) External Appearance.

(a) Ligature Mark

Ligature mark is a well-defined and slightly depressed mark corresponding roughly to the breadth of ligature, usually situated low down in the neck below the thyroid cartilage, and encircling the neck horizontally and completely

Besides these marks, there may be abrasions and bruises on the mouth, nose, cheeks, forehead, lower jaw or any other part of the body, if there has been a struggle..

(b) Appearances Due to Asphyxia..The eyes are prominent and open. In some cases, they may be closed. The conjunctivae are congested and the pupils are dilated. Petechiae are seen in the eyelids and the conjunctivae. The lips are blue....

(ii) Internal Appearance.There is extravasation of blood into subcutaneous tissues under the ligature mark or finger marks, as well as in the adjacent muscles of the neck, which are usually lacerated... .The cornua of the hyoid bone may be fractured also the superior cornua of thyroid cartilage but fracture of the cervical vertebrae is extremely rare.

The larynx and trachea are congested, and contains frothy mucus

It should be noted here that the hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation, although the larynx and the trachea may, in rare cases, be fractured by a fall.....

The lungs are usually markedly congested, showing haemorrhagic patches and petechiae and exuding dark fluid blood on section The brain is also congested and shows petechial haemorrhages.

Differences Between Hanging and Strangulation

The differences between hanging and strangulation are given below in tabulated form:

Hanging

Strangulation

Mostly suicidal

Mostly homicidal

Face - Usually pale andpetechiae rare

Face - Congested, livid and markedwith petechiae..

Ligature Mark -Oblique, non-continuousplaced high up in the neck between the chin and the larynx, the base of thegroove or furrow being

hard, yellow andparchment-like

Ligature Mark Horizontal ortransverse continuous, round the neck, low down in the neck below the thyroid,the base of the groove or furrow being soft and reddish..

Scratches, abrasions andbruises on the face, neck and other parts of the body - Usually not present

Scratches, abrasions and bruiseson the face, neck and other parts of the body - Usually present'

27. When seen in the light of afore-noted Medical Literature contained in Modi's Medical Jurisprudence (supra), following findings recorded in the post-mortem report Ex.PW-4/A point determinatively towards the fact that the cause of death of the deceased was strangulation:

(i) The face was congested.

(ii) Haemorrhagic spots found on the conjunctivae of both eyes.

(iii) The lips were blue.

(iv) The brain was congested.

(v) There was effusion of blood in the superficial layers under the ligature mark.

(vi) The larynx was congested and containing mucus.

(vii) The lungs were congested and showing sub pleural petechiae.

(viii) Most importantly, bruises and abrasions were found on the face, neck, arm and foot of the deceased which evidence that there was a struggle between the deceased and her assailant.

28. Arguments advanced pertaining to placement and nature of ligature mark found on the neck of the deceased do not show a suicidal death for the reason the nature of the ligature mark largely depends upon the nature of the material used as a ligature material and the manner in which a victim is strangulated. In cases where a cloth is tied as a noose around the neck of the victim and the victim is strangulated by pulling the knot of the cloth, it is possible that the ligature mark found on the neck of the victim would resemble the mark found in case of hanging.

29. Be that as it may, the evidence of Dr. L.T. Ramani PW-4, was not seriously controverted by the defence as already noted by us in the foregoing paras. The defence did not put any question to Dr. L.T. Ramani PW-4, pertaining to the placement and nature of the ligature mark found on the neck of the deceased.

30. Having given no opportunity to the witness to explain with reference to the placement and nature of the ligature mark found on the neck of the deceased, no adverse inference can be drawn against the prosecution on that score. The decisions reported as Rahim Khan v. Khurshid Ahmad : AIR 1975 SC 290, State of UP v. Anil Singh : 1988 (Supp) SCC 686 and Sunil Kumar v. State of Rajasthan (2005) 9 SCC 298 support our view.

31. A perusal of various articles written by pathologists show that the hyoid bone is a U-shaped bone in the neck which is fractured in only one out of three homicides by strangulation. Thus, the non-fracture of hyoid bone of the victim does not exclude strangulation as a cause of death. The reasons as to why the hyoid bones of only some of the victims get fractured relate to the nature and magnitude of force applied to the neck, the age of the victim, the nature of the ligature material

used to strangle and intrinsic anatomic features of the hyoid bone. The hyoid bone generally gets fractured in the case of the victims who are above 39 years of age. The fractured hyoid bones are generally fused or ossified whereas non- fractured hyoid bones are generally not fused. The shape of the hyoid bone is also a differentiating factor in fractured and non-fractured hyoid bones. Fractured hyoid bones are generally longer in the anterior-posterior plane and are more steeply sloping when compared with the non-fractured hyoid bones. In this view of the matter, we do not agree with the submission of the learned Counsel for the appellant that the fact that the hyoid bone of the deceased was found intact indicates that the cause of death of the deceased was not strangulation.

32. The evidence of Ram Piari PW-1, Sharwan Kumar PW-2 and Pawan Kumar PW-9, the parents and maternal uncle of the deceased respectively, as also the contents of the letter Ex.P-1 written by the deceased to her parents, contents whereof have been noted in para 8 above, clearly establishes that the relations between the appellant and the deceased were strained and that the deceased was not happy in her matrimonial house. In view of said clinching evidence establishing that the relations between the deceased and the appellant were not cordial, nothing much turns on the fact that the deceased along with the appellant visited the parental house of the deceased a day prior before she died.

33. The third submission was advanced by the learned Counsel for the appellant is unmindful of the depositions of the parents of the deceased that the appellant had misled them by falsely telling them that the deceased has been admitted in DDU Hospital, which depositions have not been challenged by the defence as already noted in foregoing paras.

34. The fact of the matter is that the appellant misled the parents of the deceased by falsely telling the mother of the deceased that the deceased has been admitted in DDU Hospital. What turns thereon?

35. In the decision reported as Faddi v. State of MP : AIR 1964 SC 1850 the accused who was charged with the offence of murdering his step son lodged an FIR stating therein that he had seen the dead body of the deceased floating in a well, which statement was found to be incorrect. It was held by Supreme Court

that the fact that the accused tried to mislead the police by giving false information is an incriminating circumstance against him.

36. In the decision reported as Mohibur Rahman v. State of Assam : (2002) 6 SCC 715 the deceased was last seen on 24.01.1991 at 05.00 P.M. at a bus stand in the company of accused Taijuddin and Mohibur Rahman and his body was found 13 days after at a distance of 30 to 40 kilometres from the bus stand where the deceased and accused was last seen alive. Accused Taijuddin met the mother and cousin of the deceased and falsely told them that the deceased had eloped with one Balijan Begum. Supreme Court acquitted accused Mohibur on the ground that there is no proximate link between the time when the deceased was last seen alive in the company of accused and the time of his death as also the place where the deceased was last seen alive in the company of accused and the place from where the body of the deceased was recovered. However, Supreme Court convicted accused Taijjudin. One of the facts which led Supreme Court to convict accused Taijjudin was that accused Taijjudin had tried to mislead the relatives of the deceased.

37. In the decision reported as Basanti v. State of HP : (1987) 3 SCC 227 accused Basanti and Asoo Ram were charged with the offence of having murdered the husband of accused Basanti. The case set up by the prosecution against accused was that accused Basanti and Asoo Ram were having illicit relations and that they murdered the deceased by striking a blow on his neck while he was asleep. The High Court convicted accused Basanti but acquitted accused Asoo Ram. Supreme Court affirmed the decision of High Court and held accused Basanti guilty of the murder of the deceased. One of the facts which led the court to come to the said conclusion was that she had tried to mislead the relatives of the deceased by falsely stating to them that the deceased had gone away from her village and had not returned.

38. In view of the judicial decisions enunciated above, the fact that the appellant misled the parents of the deceased can certainly be used as an incriminating circumstance against him.

39. We agree with the fourth submission advanced by the learned Counsel for the appellant that there is nothing incriminating in the fact that an injury which was sustained by the appellant two-three days prior to the day of the death of the deceased was found on the person of the appellant. Had the injury found on the person of the appellant been sustained by him on the day of the death of the deceased the same would have been highly incriminating against him.

40. Has the prosecution been able to establish that the deceased died in her bedroom in her matrimonial house?

41. As already noted herein above, SI Ranbir Singh PW-3, deposed that when he reached the matrimonial house of the deceased he saw that the deceased was lying dead on a bed kept in the bedroom of the deceased. SI Ranbir Singh could have had no personal knowledge about the fact that the room where the deceased was found dead was the bedroom of the deceased. Obviously SI Ranbir Singh was told by some family member or neighbour or acquaintance of the deceased that the room where the deceased was found dead was the bedroom of the deceased. When a witness testifies about something which he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person from whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, the former's evidence would be admissible to corroborate the latter in accordance with Section 157 Cr.P.C. However such a statement made to a police officer when he is investigating into an offence cannot be used to even corroborate the maker thereof in view of embargo contained in Section 162 Cr.P.C. and can be used only to contradict the maker thereof, except in those cases where Sub-section (2) of Section 162 applies. In view of aforesaid legal position, the aforesaid deposition of SI Ranbir Singh cannot be admitted in evidence as it is hearsay.

42. This takes us to determine the credibility of the site plan Ex.PW-5/B of the matrimonial house of the deceased prepared by SI Sardar Singh PW-5. While preparing a site plan a police officer can certainly record what he sees and observes and the same would be admissible in evidence as it will be direct and substantive evidence being based upon the personal knowledge of the police

officer. However, any mark put by the police officer on the site plan based on the statements made to him by the witnesses would be inadmissible in view of provisions of Section 162 of Cr.P.C. as it will be no more than a statement made to the police during investigation. (See the decision of Supreme Court reported as Tori Singh v. State of UP : AIR 1962 SC 399 and Jagdish Narain v. State of UP : AIR 1996 SC 3136)

43. In the instant case, SI Sardar Singh PW-5, could have had no personal knowledge about the fact that the room where the deceased was found dead was the bedroom of the deceased. It is plainly obvious that the recording contained in the site plan Ex.PW-5/B that the room where the deceased was found dead was the bedroom of the deceased must have been made by SI Sardar Singh on the basis of the statement(s) made to him by some family member or neighbour or acquaintance of the deceased in said regard. In the light of legal position stated herein above, the recording contained in the site plan Ex.PW5/B that the room where the deceased was found dead was the bedroom of the deceased is inadmissible in evidence. Thus, no credibility can be given to the site plan on the aspect of the deceased being found dead in the bedroom of her house.

44. Besides the afore-noted deposition of SI Ranbir Singh PW3 and the recording contained in the site plan Ex.PW-5/B of the matrimonial house of the deceased, no other evidence was adduced by the prosecution to establish that the room where the deceased was found dead was the bedroom of the deceased.

45. The sum and substance of the above discussion is that the prosecution has failed to establish that the room where the deceased was found dead was the bedroom of the deceased.

46. But the fact remains that the deceased died in her matrimonial house where she used to reside with her husband i.e. the appellant.

47. Section 106 of the Evidence Act was examined in great detail by Supreme Court in the decision reported as State of WB v. Mir Mohammad Omar : AIR 2000 SC 2988. The relevant portion contained therein is being quoted herein under:

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

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

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

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

In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: 'When any fact is especially within the

knowledge of any person, the burden of proving that fact is upon him.

The section 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 the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.

48. In the decision reported as Trimukh Maroti Kirkan v. State of Maharashtra : (2006) 10 SCC 681 the accused was charged with the offence of having murdered his wife. The circumstances proved by the prosecution to infer the guilt of the accused were that the deceased died in her matrimonial house; that the accused and his parents used to harass the deceased as the parents of the deceased failed to pay a sum of Rs. 25,000/- demanded by them and that the accused and his parents falsely informed the parents of the deceased and some persons in the village that the deceased died on account of snake bite. Supreme Court held the accused to be guilty of committing the murder of his wife. The relevant discussion contained in the said decision is being quoted herein under:

If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecution 1944 AC 315 quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh : 2003 Cri LJ 3892). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the

Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

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

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation

Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of the crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong indication that he is responsible for the crime....

49. The legal norm in respect of the application of Section 106 in a given case is contained in the following observations of Supreme Court in Mir Mohammad's case (supra):

The section 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 the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts,

unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference

50. Has the prosecution been able to prove facts from which a reasonable inference can be drawn that the appellant is the guilty of the murder of the deceased?

51. The facts proved by the prosecution are being enumerated as under:

A The deceased died a homicidal death.

B The house where the deceased was found dead was in the possession and occupation of the appellant.

C The relations between the deceased and the appellant were strained.

D There were no signs of any forced entry or the presence of an intruder in the house where the deceased was found dead.

E The post-mortem of the deceased was conducted at about 10.00 A.M. on 19.05.1992. As per the post-mortem report Ex.PW-4/A of the deceased, the deceased died 30 hours before the conduct of the post-mortem, meaning thereby, that the deceased died at about 04.00 A.M. on 19.05.1992. The circumstance that the appellant admitted in his examination under Section 313 Cr.P.C. that he was present in the house where the deceased was found dead at 05.30 A.M. on 19.05.1992 when coupled with the fact that the accused is expected to be in his house in the wee morning hours establishes that the appellant was present in the house in question around the time of the death of the deceased.

F The appellant misled the parents of the deceased.

52. From the aforesaid conspectus of facts, a reasonable inference can be drawn that the deceased was murdered by the appellant.

53. Has the appellant been able to dispel the aforesaid inference?

54. As already noted herein above, the appellant stated in his examination under Section 313 Cr.P.C. that he returned from his office to the house where the deceased was found dead at about 05.30 A.M. on 19.05.1992 and saw that the deceased was lying unconscious on the bed. The appellant could have easily led evidence to establish that he was present in his office at around 04.00 A.M. on 19.05.1992 i.e. the time of the death of the deceased and that he returned to the house in question at about 05.30 A.M. on 19.05.1992. However, the appellant did not lead any evidence in support of his defence. In that view of the matter, we have no hesitation in concluding that the aforesaid explanation offered by the appellant is most unsatisfactory. Besides, the conduct of the appellant belies said fact. If he indeed saw his wife unconscious the natural conduct would have been to rush her or summon medical aid. Nothing of this sort was done. What did he do? Give false information to the parents of his wife.

55. In view of the facts that the prosecution has been able to prove such facts wherefrom a reasonable inference can be drawn that the appellant is the murderer of the deceased and that the appellant has furnished an unsatisfactory explanation to dispel the said inference, it can be held that the appellant is guilty of the murder of the deceased.

56. In Dasari's case (supra) relied upon by the learned Counsel for the appellant, the accused was charged for the offence of murdering his wife. The deceased was found dead in the house occupied by her and the accused. On the morning of 20.04.1996 the accused informed the brother of the deceased that something untoward has happened to his sister and took him to his house. The death of the deceased had taken place on the night of 19th April or in the early hours of 20th April. The Sessions Court acquitted the accused. In appeal, the High Court convicted the accused on the ground that only the accused and the deceased were in the house at the relevant time and that there was no possibility for others to enter into the house. Supreme Court reversed the decision of the High Court and acquitted the accused on the ground that though the circumstances of the case are suggestive of strong possibility of the presence of the accused at his house, the same does not give rise to an irresistible inference that the accused was present in his house around the time of the death of the deceased and the

accused alone must have committed the murder of the deceased.

57. It is worth noting that the legal norm culled out in Mir Mohammad's case (supra) as also the decision in Trimukh's case (supra) where it was held that it is incumbent upon a husband to offer a plausible explanation for the death of his wife in cases where the murder of the wife takes place inside a dwelling-house where the wife 'normally' resided with her husband has not been noticed by Supreme Court in Dasari's case (supra).

58. In Siddaiah's case (supra) the accused was charged with the offence of having murdered his wife who had died in the afternoon of 19.04.1997. The High Court had convicted the accused on the basis of the following circumstances that (i) the accused was a drunkard; (ii) the accused and the deceased used to quarrel with each other frequently; (iii) the accused admitted his presence in the house where the deceased was found dead at the time of the incident in his examination under Section 313 Cr.P.C. and (iv) the accused absconded from the day of the death of the deceased till the day of his arrest. Supreme Court acquitted the accused on the grounds that the evidence on record suggested that there was no such discord between the accused and the deceased which could have led the accused to murder the deceased; that the accused did not admit his presence in the house where the deceased was found dead at the time of the incident in his examination under Section 313 Cr.P.C. and that abscondence in itself is not sufficient to convict the accused.

59. There is a fundamental difference between the facts of Siddaiah's case (supra) and the present case. In Siddaiah's case (supra), the deceased had died in the afternoon and there was no circumstance which could indicate that the accused was present in the house where the deceased was found dead at the time of the death of the deceased whereas in the present case the fact that the appellant himself admitted his presence in the house where the deceased was found dead soon after the death of the deceased and that the deceased died in the wee morning hours when the accused was expected to be present in his house were highly suggestive of the fact that the appellant was present in the house in question around the time of the death of the deceased.

60. Insofar as the last submission advanced by the learned Counsel that the appellant is entitled to get benefit of doubt as the house in question was occupied by three other persons besides the appellant is concerned, suffice would it be to state that a perusal of the discussion contained above would show that the appellant has not been convicted merely on the basis that he was the occupier of the house where the deceased was found dead but there are other circumstances as well namely, the relations between the appellant and the deceased were strained and that the appellant misled the family members of the deceased which when coupled with the fact that the appellant was occupier of the house in question establish the guilt of the appellant.

61. In this regards, it would also be apposite to note the decision of Supreme Court reported as Bija and Ors. v. State of Haryana : (2008) 11 SCC 242. In the said case, the case set up by the prosecution against the accused persons was that the deceased was married to one Jagdish Singh and that Jagdish Singh had abandoned the deceased because she was not beautiful and was unable to bear a child. Due to the intervention of panchayat, the deceased was got re-married to Raghbir Singh, the younger brother of the husband of the deceased. The father-in-law, mother-in-law, ex-husband and the second husband of the deceased was not in favour of second marriage of the deceased with the younger brother of the ex-husband of the deceased but they had to agree for the same due to intervention and pressure of the panchayat. The deceased was found dead in her matrimonial house in the intervening night of 01/02.05.1998. The deceased was sleeping on the ground floor whereas the father-in-law, mother-in-law, ex-husband and the second husband of the deceased were sleeping on the roof of the house in question at the time of the death of the deceased. The aforesaid four accused had tried to project that the deceased died due to electrocution whereas the cause of her death was smothering. The Sessions Court and High Court convicted all the four accused persons for having committed the murder of the deceased. In appeal, the Supreme Court acquitted the father- in-law, mother-in-law and ex-husband of the deceased on the ground that there was no evidence to show that they had an intention to kill the deceased and that they were parties in killing the deceased. However, the husband of the deceased was convicted on the ground that he had a direct, immediate and proximate grievance against the deceased at the time of her

death. The said decision brings out that where the death of a person takes place in a house which is occupied by several persons, the fact that the house in question is occupied by several persons and anyone of the occupier could have committed the murder of the deceased is no ground to acquit the occupier against whom there is evidence pointing towards his guilt.

62. There is yet another circumstance which is worth noticing. The appellants had taken a false defence by leading evidence to the effect that the burn injury found on the chest of the deceased was sustained by her when she fell on a hot object by cooking. It is settled legal principle that the circumstance of false defence taken by an accused is a circumstance which, after the chain of the circumstances appearing an accused is complete, can be added to the said chain to reinforce the guilt of the accused. (See the decision of Supreme Court reported as Sharad Birdhichand Sarda v. State of Maharashtra : AIR 1984 SC 1622.)

63. In view of the above discussion, we do not find any merit in the present appeal. The same is dismissed.

64. Since the appellant is still in jail we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar to be made available to the appellant.

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