

Uttam Kumar Vs. State

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Court : Delhi

Decided On : Apr-26-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Foreign Exchange Regulation Act; ;Indian Penal Code (IPC) - Sections 302 and 304; ;Code of Criminal Procedure (CrPC) - Sections 91, 161 and 313

Appeal No. : Crl. Appeal Nos. 433 and 747/2007

Appellant : Uttam Kumar; State

Respondent : State;uttam Kumar

Advocate for Def. : Richa Kapoor, Adv. in Crl. Appeal No. 747/2007 and; Anurag Jain, Adv. in Crl. Appeal No. 747/2007

Advocate for Pet/Ap. : Anurag Jain, Adv. in Crl. Appeal No. 433/2007 and; Richa Kapoor, Adv. in Crl. Appeal No. 433/2007

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. Process of criminal law was set into motion when at around 11.20 P.M. on 19.04.1999 ASI Dani Ram PW-4, noted vide daily diary entry Ex.PW-4/A, that one

Anil Garg r/o A-24, Adarsh Nagar, Rama Road, Delhi has informed over telephone that his daughter Priyanka (herein after referred to as the 'Deceased') has been forcibly confined in a bathroom by her tutor; that the door of the said bathroom is bolted from inside and that said person is not opening the door of the bathroom inspite of repeated knocking at the door.

2. Inspector Jeewan Singh Gill PW-18, was handed over a copy of the afore-noted DD entry. Accompanied by Const. Bhura Singh PW-13, Const. Giri Kumar PW-14, Const. Mukesh PW-15 and SI Mukesh Kumar PW-17, Inspector Jeewan Singh Gill reached the house in question and what happened thereafter is recorded in the endorsement (tehrir) Ex.PW-16/A made by Inspector Jeewan Singh Gill PW-18, which reads as under:

Respected Duty Officer Police Station Adarsh Nagar it is humbly submitted that after receiving a copy of D.D. No. 21A dated 19/4/99 I Inspector accompanied with SI Mukesh Kumar, Const. Giri Kumar No 2372/NW and Const. Bhura Singh No 1415/NW and Const. Mukesh Kumar 1634/NW reached H. No. A-24, Rama Road, Adarsh Nagar, where I met Anil Garg and his wife and children and told that the tutor of their children Uttam Kumar has locked their daughter Priyanka in a bathroom on the first floor of the house and that he is not opening the door of the bathroom inspite of repeated knocking at the door. When the door of the bathroom was not opened inspite of my knocking at the door the same was forcibly opened and broken upon which I saw that the dead body of Kumari Priyanka was lying in the pool of blood in the bathtub in the bathroom and that there were injury marks caused by sharp weapon on the neck, chest and ear of Priyanka. Huge quantity of blood was lying in the bathtub and that there were drops of blood at various places in the bathroom. Accused Uttam Kumar s/o Hazari Lal who was holding a blood stained knife in his right hand was found standing in the bathroom The aforesaid police officers apprehended the accused. Thereafter the statement of Anil Garg was recorded and on the basis of the said statement and circumstances found at the spot it appears that an offence punishable under Section 302 IPC has been committed. Therefore the said endorsement is being handed over to Const. Giri Kumar No. 2372/NW for registration of FIR. The FIR be registered and the number of the FIR be intimated to the undersigned. Crime Team and photographer be sent

at the spot and special report be delivered. I am conducting investigation at the spot.

Time of Occurrence: 19/4/99 at 9.30 to 11.20 PM

Place of Occurrence: Bathroom first floor H. No. A 24 Rama Road Adarsh Nagar

Time of departure of endorsement: 20.04.99 at 1.30 A.M.

3. The afore-noted endorsement on basis whereof the FIR was registered was preceded by Inspector Jeewan Singh Gill PW-18, recording the statement Ex.PW-2/A of Anil Garg, the father of the deceased, gist whereof is that the deceased was a student of second year, St. Stephen college and that her marriage was to be solemnized on 28.04.1999. Accused Uttam Kumar used to give tuitions to his son Vibhor at his residence. On 19.04.1999 at around 09.30 P.M. the deceased and her mother returned to the house after shopping. At that time Uttam Kumar was teaching Vibhor in a room on the first floor of the house. After keeping the things purchased by her in the house the deceased went to the room where the accused was teaching Vibhor. When the deceased entered Vibhor's room, Vibhor went to the kitchen to drink water. Thereafter he i.e. Anil Garg along with Vibhor went to the room where the accused was teaching Vibhor. When he i.e. Anil Garg did not find the accused in the room he made inquiries from Vibhor about the whereabouts of the accused upon which Vibhor told him that the accused might be present in the bathroom attached to the said room. Thereafter he inquired about the deceased as she was nowhere to be seen in the house. When he and his family members could not find the deceased anywhere in the house a doubt arose in his mind that perhaps the accused may have locked the deceased and himself in the bathroom. The door of the bathroom was knocked and the accused responded and on being asked to open the door, the accused replied 'Since you are marrying the deceased with some other boy I have murdered her and that I would not open the door'. Thereafter he informed the police about the aforesaid incident.

4. The statement Ex.PW-2/A on which the endorsement Ex.PW-16/A was made by Inspector Jeewan Singh Gill was forwarded at 01.30 A.M. on 20.04.1999 through

Const. Giri Kumar PW-14, to the police station for registration of an FIR where HC Veer Sen PW-16, registered FIR No. 235/1999, Ex. PW-16/B.

5. As recorded in the endorsement Ex.PW-16/A, the appellant was apprehended at the spot. In fact, if the contents of the endorsement Ex.PW-16/A are correct, the accused was caught red-handed. Inspector Jeewan Singh Gill PW-18, seized the knife recovered from the possession of the accused vide memo Ex.PW-2/4 as also prepared the sketch Ex.PW-2/3 of the said knife. Thereafter Inspector Jeewan Singh Gill seized the shirt and vest worn by the accused when he was apprehended vide memo Ex.PW-2/5. It may be noted that the seizure memo Ex.PW-2/5 records that three buttons of the shirt worn by the accused when he was apprehended were found to be broken. Inspector Jeewan Singh Gill prepared the site plan Ex.PW-18/1 of the house in question; recording therein at points 'XA' and 'XC' the spots where the body of the deceased was lying and the accused was found standing in the bathroom respectively.

6. In the meantime, SI Ashok Kumar PW-11, Finger Print Expert, and Const. Yashpal PW-12, a photographer, reached the spot on being summoned. SI Ashok Kumar inspected the spot and prepared his report Ex.PW-11/A. The report Ex.PW11/A records that four chance prints were found on a washing machine kept in the bathroom in question. It is also noteworthy that the report Ex.PW-11/A records that the time of the occurrence of the murder of the deceased was about 09.15 P.M. on 19.04.1999.

7. Const. Yashpal PW-12, took the photographs Ex.PW12/8 to Ex.PW-12/13 of the body of the deceased as also the bathroom where the body of the deceased was found; negatives whereof are Ex.PW-12/1 to Ex.PW-12/7. (It may be noted here that one photograph could not be developed). The photographs Ex.PW-12/12 and Ex.PW-12/13 depict the door from within the bathroom which opens into the bedroom.

8. The body was seized and sent to the mortuary, where on 20.04.1999, at about 11.35 A.M. Dr. Komal Singh PW-9, conducted the post-mortem and prepared the report Ex.PW9/1. Following external injuries were found on the person of the deceased as recorded in the post-mortem report Ex.PW9/A:

1. Incised, clean cut on right upper side of 1st intercostal space 2 cm x 1.2 cm in size, both angle obtuse
2. Incised, clean cut wound on right side of chest 2.8 cm x 1.8 cm in size just below and medial to No. 1, both angles acute
3. Five small size incised wound over left lateral side of neck 0.8 cm x 0.1 cm, 0.4 cm x 0.1 cm, 0.6 cm x 0.2 cm, 0.4 cm x 0.1 cm, 0.5 cm x 0.1 cm. Clean cut, both angles acute
4. Cut throat on right to left side of neck. 8 cm x 4 cm in size at upper level of thyroid cartilage. All adjacent tissues stained with clotted blood.
5. Multiple adjacent wound lower down to No. 4 injury 0.4 cm x 0.1 cm, 1 mm x 1 mm, 2 mm x 2 mm
6. Incised cut just below No. 4 injury 6 cm x 1.2 cm in size
7. Cut incised wound on left lateral side 1.4 cm x 0.3 cm wound on neck just left to No. 5 injury
8. Cut sickle shape, incised wound on lower side of chest 3 cm x 3 mm in size
9. The post-mortem report Ex.PW-9/1 further records that the cause of death of the deceased was shock resulting from injuries Nos. 1 and 2 found on the person of the deceased; that all the injuries found on the person were ante-mortem in nature and that the death of the deceased had taken place about 12 hours before the conduct of the postmortem.
10. The knife recovered from the possession of the accused at the time of his arrest was also sent to the mortuary along with the body of the deceased for purposes of obtaining opinion of the doctor regarding the weapon of offence. Dr. Komal Singh PW-9 examined the said knife and gave his opinion Ex.PW-9/2 which inter-alia records that the injuries Nos. 1 and 2 found on the person of the deceased could have been caused by the said knife. The opinion Ex.PW-9/2 has been penned at the rear page of the postmortem report on which the sketch of the knife has also been drawn by Dr. Komal Singh.

11. After conducting the post-mortem, Dr. Komal Singh handed over the blood sample of the deceased on a gauze and the clothes of the deceased to Const. Bhoora Singh PW13 and Const. Giri Kumar PW-14, and the same were seized by the investigating officer vide memo Ex.PW-13/1 when the two handed over the same to the investigating officer. For record it may be noted here itself that on 12.07.1999 Dr. Komal Singh gave a second opinion Ex.PW-9/3 regarding the weapon of offence; the opinion being that the injuries Nos. 3 to 8 found on the person of the deceased could have been caused by the knife recovered from the possession of the accused.

12. The clothes and blood sample of the deceased; the knife recovered from the possession of the accused and the shirt and vest worn by the accused at the time when he was arrested were sent to the Forensic Science Laboratory for serological examination.

13. Vide FSL reports Ex.PW-18/9/(1-2), Ex.PW-18/9/3 and Ex.PW-18/9/4, it was opined that the blood group of the deceased was O; that human blood of 'O' group was found on the shirt worn by the accused at the time of his arrest; human blood of the same group was detected on the clothes of the deceased and the knife recovered from the possession of the accused. It was further opined that human blood was detected on the vest worn by the accused at the time of his arrest, group whereof could not be determined.

14. The four chance prints found in the bathroom where the body of the deceased was found dead and the specimen finger prints of the accused were sent to the Finger Print Bureau for comparison. Vide report Ex.PW-1/A it was opined that one of the chance prints found in the bathroom in question is identical with the finger print of the accused.

15. Statements of family members of the deceased present in the house were recorded, all of whom inculpated the appellant.

16. Armed with the aforesaid materials, the police filed a charge sheet against the accused.

17. In a nutshell, the case set up by the prosecution against the appellant was that the appellant who was the tutor of the deceased and her brothers developed a liking for the deceased. When the appellant learnt that the deceased is getting married he got enraged and murdered the deceased by indiscriminately stabbing her in the bathroom in her house.

18. Before proceeding to note the evidence led at the trial, it is most important to note certain facts which were pressed into aid by learned Counsel for the State to show, as per the State, the crafty mind of the appellant.

19. During the trial, the appellant filed an application dated 06.09.2005 under Section 91 Cr.P.C. praying that the official record maintained at Tihar Jail pertaining to the meetings held between the jail inmates and the visitors between the period 21.04.1999 to 09.05.2000 be summoned. Along with the said application, written arguments were also filed by the appellant detailing the reasons for summoning the said record. (It may be noted here that the application dated 06.09.2005 is at page 1201 of the trial court record whereas the arguments filed by the appellant in support of the said application are at page 787 of the trial court record. It may further be noted that the said two documents are not drafted by the counsel of the appellant but are penned by the appellant himself in his own hand).

20. It is significant to note that the written arguments filed by the appellant in support of the application dated 06.09.2005 records that between the period 21.04.1999 to 09.05.2000 one Tinnu @ Tinny, the lover of the deceased, accompanied by his two friends named Raj and Suresh visited him in Tihar Jail. During the said visits, Tinny told him that on 19.04.1999 he met the deceased in a market. Seeing the deceased in the company of Tinny, the mother of the deceased who was also present in the market got enraged and forcibly took the deceased to her residence. On the same day i.e. 19.04.1999 at about 08.10 P.M. Tinny received a SMS from a servant employed at the house of the deceased to the effect that the deceased tried to commit suicide when her family members forced her to end her relationship with Tinny. Tinny handed over the letters Ex.DW-4/1 to Ex.DW-4/17 written by the deceased to him.

21. Relevant would it be to note that the order dated 03.12.2005 passed by the learned Trial Court records that the jail meeting record sought to be summoned by the accused has been weeded out by the jail authorities.

22. At this juncture, it would be appropriate to note the contents of the letters Ex.DW-4/1 to Ex.DW-4/17 referred by the accused in the afore-noted written arguments filed by him.

23. The relevant portion of the letter Ex.DW-4/1-2 reads as under:

Dear Tinny

I am dying to meet you see again I started crying. But I know my life can never be happy. Something is always present to disrupt our happiness and conesion. Varun shall tell you many things which would prove that I forgot you completely over there, that I am wrong you will beat me, scold me. I have decided never to say anything to you. Because you are just a expectation box who just expects and never stand to the expectation of others

Tinnu now during these 18 days I have really made up my mind not to say anything to you. I know I am true and I love you and now I don't care whether you feel/realise it or not.

Actually he just told me what he is going to tell you so just a small truth is given below....

24. The relevant portion of the letter Ex.DW-4/3-5 reads as under:.b) I felt there was no harm because when I stayed idle at home. I used to start crying just as I started sending you kisses. (Mamiji saw those tears, the very first day)

25. The relevant portion of the letter Ex.DW-4/6 reads as under:

Our relations have become so much strained that I fear someday

My brain is not working.

Sorry Tinnu I am unable to write this letter. I am (complete)

crying for u

babe

26. The relevant portion of the letter Ex.DW-4/7 reads as under:.You can never understand me. Really, I know you, my life would just end in making trials to get you completely

27. The relevant portion of the letter Ex.DW-4/8 reads as under:.I am really fed up. Please give me freedom from this life and let me float free in that hell of my follies.

28. A reading of the letters Ex.DW-4/1 to Ex.DW-4/17 brings out that whosoever Tinnu @ Tinny was, if the letters were in the hand of the deceased, the two were emotionally involved at some point of time but relations had soured.

29. During the trial, the appellant wrote numerous letters to the family members of the deceased including the letters Ex.DW-5/PA and Ex.DW-5/PB which he admitted as having written by him when he was cross-examined as DW-5; appellant having chosen to examine himself as his own witness.

30. The letter Ex.DW-5/PA is addressed to the mother of the deceased i.e. Uma Garg. The said letter records that ten under-trials got various relief's from the courts due to the written arguments prepared by him i.e. the appellant. Relevant would it be to note the following portion of the letter Ex.DW-5/PA:

You can receive at any time all the letters (about 50) written by the baby or other articles concerned with the baby from me as per your convenience.

31. The letter Ex.DW-5/PB is addressed to the parents of the deceased, namely Anil Garg and Uma Garg. The relevant portion of the letter Ex.DW-5/PB reads as under:.Thus, as I have been involved in great works, similarly you (Umaji) have validated your name by not presenting my acceptance of the crime in the honourable court. However, it is not sufficient for my release.... Anil ji, you please do not worry about the application (under Section 91 Cr.P.C.). It is not very deep conspiracy. However, with a view to prove the case and for giving a gift of efficiency, ability and expertise of this Eklavaya to his respectable Guru

Dronacharya (Shri R.N. Mittal), a confusing situation has been created. The truth is that I have managed to get this confidential information that whole records of the visits has been weeded out/destroyed. After this, I filed an application before the court of CJ-3 and CJ-4 Superintendent on 22.8.05 requesting for the visits records for verification.... On 01.09.05, I received the same reply which I had obtained from some reliable sources. Then, on 05.09.2005, I filed an application in the honourable court in which I asked for the records (Tinnu @ Tinni) In my view, you should now forgive me and get me released after contacting Shri K.C. Lohia. If you wish, I can address a letter to Lohia Saheb and confess my crime and you can get this letter read out to him at your personal level. However, Mittal Saheb can tell you the way to change the Section 302 into 304, thus reducing the imprisonment period to 10 years. You should pray to him on my behalf With mutual discussion, beneficial circumstances can be created for both of us

Divya Uma ji,

I again repeat that for the tragic and untimely end of the baby, I am not the only person responsible but there are others also responsible for it. Certainly, there is no repentance for this severe sin....She is, like always, still alive in my personality, my existence. I still have full respect, affection, dedication and loyalty in my heart for you (all fours) and its proof is that the baby is still my soul.Till this body or soul exists and till Priyanka rests in this soul, you are hundred per cent safe. I am sure that Priyanka will not only be an integral part of my soul till several life of the universe, but she will be my soul....

32. At the trial, the prosecution examined 19 witnesses.

33. Anil Garg PW-2, the father of the deceased, deposed on the lines of the statement Ex.PW-2/A given by him to the police. Additionally, he deposed that the police had seized the knife recovered from the possession of the appellant and the shirt and vest worn by the appellant when he committed the crime.

34. During cross-examination, on being questioned about the inmates of the house, he stated (Quote): 'Sunil Garg and Satish Garg are my real brothers. It is correct that my brother Satish Garg has been living on the ground floor of the H.

No. A-24 while other brother Sunil Garg has been living in H. No. A30 in Rama Road. Vol. On that day they had gone to distribute marriage cards....My younger brothers Satish and Sunil had not come at the spot vol. they had gone to distributed the marriage invitation card in respect of marriage of deceased.' On being questioned about the time of the confinement of the deceased in the bathroom, he stated (Quote): 'My wife Uma Garg and my daughter Priyanka had gone for shopping on that day at about 5 pm in a car with the driver. It took about 30/45 minutes after arrival of my wife and daughter from the shopping in the incident of confinement of my daughter in the bathroom came to my notice'. On being questioned about the door of the bathroom, he stated (Quote): 'Myself and my family members tried for about 20/30 minutes to open the door of the bathroom and thereafter I informed he police. We did not try to brake open the door at our level before arrival of the police... .All the police officials together forced the door to break open and in this process inside bolt of the bathroom were broken and the door was open.' On being questioned about the relations between the accused and his family, he stated (Quote): 'Uttam Kumar accused started teaching children in my house 8/10 years back. My daughter Priyanka and my elder son Varun together taking teaching from accused Uttam Kumar.' We had only relationship of teaching my children and had no other family intimacy with him.' On being questioned about the relations between the deceased and the accused, he stated (Quote): 'We had no reason to have suspicion of any kind of relation between the accused and the Priyanka and it is correct that accused used to treat Priyanka as his daughter.' On being confronted with the letters Ex.DW-4/1 to Ex.DW-4/17, he denied that the said letters were in the handwriting of the deceased. He denied the suggestion that the deceased was having an affair with a boy named Tinnu @ Tinny and that his family objected to the said relationship; that on 19.04.1999 the deceased met said boy in the market; that when the deceased refused to end her relationship with Tinny he and his son Varun committed the murder of the deceased in a fit of fury; that thereafter they called the appellant from his residence and asked him to take the blame for the murder of the deceased; that when the appellant refused to oblige them he and his son Varun forcibly pushed the accused in the bathroom and locked him there; that the buttons of the shirt worn by the appellant broke during the struggle; that they called M.R. Singhal who

was his maternal uncle and M.L.A. and that the police falsely implicated the appellant at the instance of M.R. Singhal.

35. Varun PW-3, the brother of the deceased, also deposed on the lines of the statement Ex.PW-2/A of Anil Garg. Additionally, he deposed that the police had seized the knife recovered from the possession of the appellant and the shirt and vest worn by the accused when he was arrested.

36. On being questioned about the relations between the appellant and his family, he stated (Quote): 'Accused Uttam Kumar had been giving the tuition for last about 8/10 years in our family. It is incorrect to suggest that we were having family relations with accused Uttam Kumar. It is correct that Uttam Kumar had been treated myself, my brother and my deceased sister like children'. He denied the suggestion that the appellant used to come to his house at 5-6 P.M. to teach Vibhor. On being questioned about the door of the bathroom, he stated (Quote): 'We did not make any effort to break open the door of the bathroom before reaching the police on spot.' On being confronted with the letters Ex.DW4/1 to Ex.DW-4/17, he denied that the said letters were in the hand of his sister. The suggestions pertaining to false implication of the appellant which were put to Anil Garg were also put to him and the same were categorically denied by him.

37. ASI Dani Ram PW-4, deposed that the DD entry Ex.PW4/1 was prepared by him. SI Gyaninder Singh PW-8, deposed that the report Ex.PW-1/A was prepared by him. SI Ashok Kumar PW-11, deposed that the report Ex.PW-11/A was prepared by him. Const. Yash Pal Singh PW-12, deposed that the photographs Ex.PW-12/8 to Ex.PW-12/13 were taken by him; negatives whereof are Ex.PW-12/1 to Ex.PW-12/7. HC Veer Sen PW-16, deposed that the FIR Ex.PW-16/B was registered by him.

38. Dr. Komal Singh PW-9, deposed that the post-mortem report Ex.PW-9/1 and the opinions Ex.PW-9/2 and Ex.PW-9/3 were prepared by him. On being questioned about the weapon of offence, he stated (Quote): 'It is correct that injury No. 8 is sickle shape. It is wrong to suggest that this injury is possible by the sickle shape of weapon only. It is correct that dimension of the injuries No. 1 to 8 are all different. It is possible that these injuries are possible by more than one weapon of

offence'. On being questioned about the opinion Ex.PW-9/3 written by him, he stated (Quote): 'On 12.07.99 at the time of subsequent opinion I had gone through the P.M. report but I had not seen the dagger. No new effect was brought to my notice from 20.04.99 to 12.7.99 when my subsequent opinion was obtained.'

39. Uma Garg PW-10, the mother of the deceased, also deposed on the lines of the statement Ex.PW-2/A of Anil Garg. Additionally she stated that the goods purchased by her and the deceased from the market were got off-loaded from the car, brought in the house and checked before the deceased went to the room where the appellant was teaching her son Vibhor. She further deposed that the police had seized the knife recovered from the possession of the appellant and the shirt and vest worn by the appellant when he was arrested. On being confronted with the letters Ex.DW-4/1 to Ex.DW-4/17, she denied that the said letters were written by her daughter. She denied the suggestion that the appellant used to come to her house at 5-6 P.M. to teach Vibhor. The suggestions pertaining to false implication of the appellant which were put to Anil Garg were also put to her and the same were categorically denied by her.

40. Const. Bhoora Singh PW-13, Const. Giri Kumar PW-14, Const. Mukesh PW-15 and SI Mukesh Kumar PW-17 deposed that on the receipt of the information about the incident they accompanied Inspector Jeewan Singh Gill PW-18 to the house in question where they learnt that the deceased has been forcibly confined in a bathroom by her tutor and that the door of the said bathroom has been bolted from inside. When the door in question was not opened inspite of repeated knocking at the door, they and the other police officers present at the spot broke open the door upon which they saw that the deceased was lying dead in the bathtub kept in the bathroom and that the appellant who was holding a knife in his hand was standing in the corner of the bathroom. Additionally, Const. Bhoora Singh, Const. Giri Kumar and SI Mukesh Kumar deposed that Inspector Jeewan Singh Gill seized the knife recovered from the possession of the appellant and the shirt and vest worn by the appellant at the time of his apprehension in their presence. Const. Bhoora Singh PW-13, also deposed that when he and the other police officers applied pressure on the door in question to break it, the bolt on the inside of the door got broken. Const. Giri Kumar PW-14, also deposed that he had

taken the endorsement Ex.PW-16/A to the police station for the purposes of registration of an FIR. It may be noted here that neither any questions were put nor any suggestions were given to the witnesses Const. Bhoora Singh PW-13 and Const. Giri Kumar PW-14 and Const. Mukesh PW-15 regarding the presence of M.R. Singhal at the spot at the time when they participated in the spot investigation. SI Mukesh Kumar duly identified the shirt and vest worn by the appellant when he was apprehended.

41. Inspector Jeewan Singh Gill PW-18, deposed that on receipt of the information about the incident accompanied by SI Mukesh Kumar PW-17, Const. Mukesh PW-15, Const. Bhoora Singh PW-13 and Const. Giri Kumar PW-14 he went to the house in question where he learnt that the deceased has been forcibly confined in a bathroom by her tutor and that the door of the said bathroom had been bolted from inside. When the door in question was not opened inspite of repeated knocking at the door, the police officers present at the spot broke open the door upon which he saw that the deceased was lying dead in the bathtub kept in the bathroom and that the appellant who was holding a knife in his hand was standing in the corner of the bathroom. He seized the knife recovered from the possession of the appellant and the shirt and vest worn by the appellant when he was apprehended vide memos Ex.PW-2/4 and Ex.PW-2/5 respectively. He recorded the statement Ex.PW-2/A of Anil Garg and made the endorsement Ex.PW-16/A on the said statement. He prepared the sketch Ex.PW-2/3 of the knife recovered from the possession of the appellant.

42. On being questioned about the door of the bathroom, he stated (Quote): 'I along with the staff i.e. SI Mukesh Kumar, Const. Mukesh Kumar, Const. Bhura Singh and Const. Giri Kumar had broken the door of the bathroom. The door of the bathroom was not seized by us. It is wrong to suggest that the door of the bathroom was not seized by the police because it was not broken'. On being questioned about the photographs of the place of occurrence, he stated (Quote): 'The photographer had gone inside the bathroom before the crime team had gone inside the bathroom and had taken the photographs. The photographer was from the police department Another photographer of the crime team had come along with the crime team. That photographer of the crime team had also taken the

photos of the place of occurrence. I did not obtain positive or the negative photographs from the photographer of the crime team.' On being questioned about the buttons of the shirt worn by the appellant when he was apprehended, he stated (Quote): 'It is correct that I did not find any of the three button of the shirt in the bathroom of the complainant'. A suggestion was given to him that Anil Garg gave money to him in the presence of the appellant for the purposes of false implication of the appellant in the present case. No suggestion was given to him that M.R. Singhal was present at the spot.

43. Vibhor Garg PW-19, the brother of the deceased, also deposed on the lines of the statement Ex.PW-2/A of Anil Garg. Additionally, he deposed that the police had seized the knife recovered from the possession of the appellant in his presence. On being questioned about the time of the occurrence, he stated (Quote): 'It is correct that I have stated in my examination-in-chief that the occurrence took place at 9.30 pm on 19-4-99. (Confronted with statement recorded Under Section 161 on 20-4-99 in which the witness had stated about the occurrence at 9.30 pm on 20-4-99).' On being confronted with the letters Ex.DW-4/1 to Ex.DW-4/17 he denied that the said letters were written by his sister. The suggestions pertaining to false implication of the appellant which were put to Anil Garg were also put to him and the same were categorically denied by him.

44. It is significant to note here that save and except giving general suggestions pertaining to the false implication of the appellant and that the appellant used to give tuition to Vibhor at 5-6 P.M. during the days of the murder of the deceased, Vibhor has not been subjected to any cross-examination with respect to essential portion of his testimony and in particular his statement that the appellant was giving him tuition in the night at around 9:00 PM.

45. In his examination under Section 313 Cr.P.C. the appellant denied everything and pleaded false implication. The defence put forward by the appellant was that he was teaching the deceased and her brothers Varun and Vibhor since last ten years and that he used to treat them as his own children. He had helped the father of the deceased i.e. Anil Garg when an income-tax raid was conducted at his house and also when he got involved in connection with a case registered under

the Foreign Exchange Regulation Act. He had extremely close relations with the family of the deceased. On one occasion the deceased told him that she was having an affair with a boy named Tinny @ Tinu upon which he advised her to disclose the said fact to her parents. He further claimed that the deceased told him that she had married Tinny. He claimed that on 19.04.1999 the deceased met Tinny in the market and that the said fact came to the knowledge of her family. On the same day i.e. 19.04.1999 between 05.00 P.M. to 06.00 P.M. he was present in the house of the deceased to give tuitions to Vibhor and thereafter he returned to his house. He claimed that at about 09.30 P.M. the security guard of the family of the deceased came to his house and told him that father of the deceased has called him to his house, upon which he went to the house of the deceased. On reaching there, the father of the deceased told him that he and his son Vibhor had murdered the deceased in a fit of fury as she refused to end her relationship with Tinny and marry the boy of their choice. The father of the deceased asked him to take blame for the murder of the deceased and that when he refused to oblige him he got angry and pushed him inside the bathroom where the deceased was lying dead and closed the door of the bathroom from outside. With the help of M.R. Singhal, M.L.A. and the DGP of the area, the family of the deceased got him falsely implicated in the present case. While he was lodged in jail, Tinny accompanied by some persons came to meet him and handed over the letters Ex.DA to Ex.DH written by the deceased to Tinny.

46. In support of his defence, besides examining himself, the appellant examined four witnesses.

47. The appellant examined himself as DW-5. In his testimony, the appellant reiterated the defence taken by him in his examination under Section 313 Cr.P.C. Additionally, he deposed that he used to give tuitions to the children of the brother of the deceased namely Udit and Niati and many other children of the relatives of the family of the deceased. Mr. Mangat Ram Singhal who was the M.L.A. of Adarsh Nagar constituency was the maternal uncle of the father of the deceased. Two months prior to the incident, Mangat Ram Singhal requested him to teach the children of his household but he declined to do so because of shortage of time. Mangat Ram Singhal also requested him to help him in the elections held in the

year 1998 but he refused to do so. Due to the said two reasons, Mangat Ram Singhal was annoyed with him. At the time when he reached the house of the deceased on being called by her father, besides the parents and brothers of the deceased, other family members of the deceased namely Darshana Garg, Shish Pal Garg, Satish Garg, Sunil Garg, Sangeeta Garg, Anita Garg, Udit, Niati, Ashotush, Soni and Siddharth were present there. Besides the aforesaid family members, servants employed at the residence of the deceased namely Manoj, Sita Ram, Raju and Hari were also present there. When he was lodged in jail, Tinny @ Tinnu along with his two friends Raj and Suresh visited him and told him that on 19.04.1999 he i.e. Tinnu had met the deceased in the market. When the mother of the deceased saw the deceased in his company, she got very annoyed and forcibly dragged the deceased from the market. After sometime Tinny received a telephonic call from a servant employed at the house of the deceased who told him that the family members of the deceased had killed the deceased when she refused to end her affair with Tinny. Tinny assured him that he would help him in getting acquitted in the present case but since that day he has not heard a word from Tinny. He apprehends that Tinny has been kidnapped or murdered by the family of the deceased. The police falsely implicated him in the present case at the instance of Mangat Ram Singhal. On 19.04.1999 he witnessed Mangat Ram Singhal handing over bundle of notes to Inspector Jeewan Singh Gill at the residence of the deceased. The door of the bathroom which was bolted from outside was opened by Mangat Ram Singhal. When he was lodged in jail, he was forced to write letters addressed to family members of the deceased.

48. On being confronted with the letters Ex.DW-5/PA and Ex.DW-5/PB the appellant admitted that the same were written by him.

49. Gautam Sharma DW-1, the elder brother of the appellant, deposed that the appellant used to go to the house of the father of the deceased to teach his children. On 19.04.1999 he saw that a servant employed at the house of the deceased told the accused that the father of the deceased had called him immediately to his house upon which the appellant left for the house of the deceased. In the early morning of 20.04.1999 he left Delhi in connection with his business. When he returned to Delhi after four days he came to know that the

appellant has been implicated in a murder case. The relations between him and the appellant were strained. On being questioned about the servant who had come to call the appellant, he stated (Quote): 'I never accompanied Uttam Kumar to the house of Anil Garg nor I ever separately visited that house.... The person who had come to call accused Uttam Kumar at earlier also came to call Uttam Kumar on 3 to 4 occasions to go to his house.'

50. Raghunath Prasad DW-2, Administrative Officer, St. Stephen's college, produced the admission form Ex.PW2/A of the deceased and deposed that the said form is required to be filled by the student in his/her own handwriting.

51. Marianus Jojo DW-3 deposed that in response to the summons issued by the Court to the Principal of Mont Fort School, Ashok Vihar, he was directed to submit the letter Ex.DW-3/A which was signed by the Principal. It appears that the appellant had wanted production of some record pertaining to the deceased from the said school, which was not available with the school.

52. Dr. Deepa Verma DW-4, Senior Scientific Officer, FSL deposed that she had compared handwritings contained in the letters Ex.DW-4/1 to Ex.DW-4/17 with the admitting handwriting of the deceased and that the handwriting contained in the letters Ex.DW-4/1 to Ex.DW-4/10, Ex.DW4/12 and Ex.DW-4/13 is that of the deceased.

53. Holding the fact that the appellant was found standing in the bathroom where the deceased was found dead with a knife in his hand when the door of the said bathroom was broken coupled with the fact that the prosecution has been able to establish that the appellant had a motive to murder the deceased, for there was evidence on record to show that the appellant had a lust for the deceased and that he could not fathom that the deceased was getting married to someone else, vide impugned judgment and order dated 07.03.2007 the learned Trial Judge has convicted the appellant of having committed the murder of the deceased. In coming to the conclusion that the appellant had a lust for the deceased, the learned Trial Judge has held that the fact that the letters Ex.DW-4/1 to Ex.DW-4/17 were produced by the appellant and that his explanation as to how he came into possession of the said letters was unsatisfactory, for the appellant failed to

establish the existence of Tinny @ Tinnu and the fact claimed by him that Tinny @ Tinnu handed over the letters Ex.DW-4/1 to Ex.DW-4/17 to him, leads to a conclusion that Tinny @ Tinnu is no one else but the appellant himself. The learned Trial Judge rejected the defence taken by the appellant on the ground that it is highly improbable that the father and brother of the deceased would have murdered the deceased in such a brutal and gruesome manner. Vide order dated 15.03.2007, the learned Trial Judge had sentenced the appellant to undergo imprisonment for life and pay fine in sum of Rs. 5,00,000/-; in default to undergo simple imprisonment for a period of five years for committing the offence punishable under Section 302 IPC. Conscious of the fact that life convicts are entitled to be considered for premature release after serving an actual sentence of 14 years, the learned Trial Judge has held that as and when the issue of premature release of the appellant is to be considered by the Board, the brutality of the murder and the pollution of the pious relationship between the teacher and the taught be brought to the notice of the Board. It is apparent that the purport of the order of sentence is that the appellant should remain for the entire life in jail and not be released premature.

54. Conscious of the fact that the appellant has transposed his defence into the citadel of the prosecution i.e. by claiming entrapment, the appellant has ostensibly tried to get away to explain his presence in the house when the police came and his fingerprint being detected inside the bathroom where the dead body of deceased was recovered. The central issue, on which the debate has to take place, is whether the defence of entrapment has to succeed or the witnesses of the prosecution have to be believed.

55. At the hearing of the appeal filed by the appellant, following arguments were advanced by the learned Counsel for the appellant:

A Firstly, unlike the burden upon the prosecution to prove the guilt, the accused has only to probablize the defence. In the backdrop of the above legal position, learned Counsel for the appellant submitted that there are several discrepancies in the case of the prosecution which strongly 'probablize' the defence of the appellant that he was entrapped. (i) With reference to the seizure memo Ex.PW-2/5 which

records that the shirt worn by the appellant which was seized when he was arrested was minus 3 buttons, learned Counsel urged that from said fact it could be gathered that a scuffle had taken place during which 3 buttons of the shirt of the appellant broke and fell down. No attempt being made to recover the broken buttons was a deliberate act of Insp. J.S. Gill for the reason if the buttons were found outside the bathroom it would have established a scuffle outside the bathroom which would be as per the claim of the appellant that when he was summoned to the house, the father and the brother of the deceased requested him to own up for the crime and take money and when he refused, they pushed him inside the bathroom where the dead body of the deceased was lying. (ii) Secondly, with reference to the testimony of the police officers namely Const. Bhoora Singh PW-13, Const. Giri Kumar PW-14, Const. Mukesh PW-15, SI Mukesh Kumar PW-17 and Inspector Jeewan Singh PW-18, as also the family members of the deceased namely Anil Garg PW-2, Varun Garg PW-3, Uma Garg PW-10 and Vibhor Garg PW-19 it was urged that all of them claimed that the door of the bathroom was broken into. If this be so, learned Counsel urged that it was unexplainable that neither the broken door nor the broken bolt was seized. Referring to the photographs Ex.PW-12/12 and Ex.PW-12/13 which depicted the door of the bathroom from inside the bathroom, learned Counsel pointed out that the door as also the latch/bolt was intact. Therefrom, counsel urged, an inference could be drawn that the door was locked from outside as claimed by the appellant after he was pushed inside and when the police came, the outside lock was removed and the appellant was apprehended after being entrapped. (iii) Thirdly, it was submitted that there was a mismatch between the shirt and the vest pertaining to the place where the two were stained with blood. It was urged that most of the stains on the vest were at places where corresponding staining of the shirt was not to be seen. Thus, it was a case of deliberately plating stains on the shirt and the vest of the appellant. (iv) Fourthly, it was urged that the opinion Ex.PW-9/3 was obtained from Dr. Komal Singh under duress, who admittedly gave opinion Ex.PW-9/2 at the first instance only with reference to injury No. 1 and 2 and opined that the two could be caused by the knife in question. For the reason, the other 6 injuries were not possibly caused by the knife in question, Dr. Komal Singh deliberately did not give, on being so pressurized, any opinion. Surprisingly,

while giving the opinion Ex.PW-9/3 Dr. Komal Singh opined without even looking to the knife. Further, injury No. 8 which was sickle shaped could not be caused by the knife in question. It was submitted that it was apparent that two weapons were used and this probablized the defence that the father and the brother of the deceased inflicted the injuries on her. (v) Fifthly, it was urged that the father of the deceased admitted during cross-examination that Satish Garg, his brother, resided on the ground floor. Counsel urged that in the peculiar facts of the instant case it was apparent that material witnesses were withheld. (vi) Lastly, on the issue it was urged that since the family members of the deceased knew that it was a case of entrapment and a local MLA was related to them, using political influence, a thoughtful plan was conceived of which could be evidenced by the fact that as against the normal practice of sending two or three police officers when information is received about a crime being committed, in the instant case 6 police officers went to the spot for the obvious reason it was all pre-planned.

B The second submission advanced by learned Counsel for the appellant was that the conduct of the parents and brothers of the deceased at the time of the occurrence was most unnatural and that the same casts a serious doubt on the veracity of their evidence. The first instance pointed out by the learned Counsel was that Vibhor PW-19, deposed that the incident in question occurred at about 09.30 P.M. Counsel also drew attention of the court to the recording contained in the crime team report Ex.PW-11/A that the time of occurrence was 9.30 P.M. Counsel drew attention of the court to the fact that the police was informed about the incident at 11.10 P.M. as recorded in DD entry, Ex.PW-4/1. Counsel submitted that the fact that the parents and brothers of the deceased took about 1 hour 40 minutes to inform the police about the incident strongly suggests that they bought time to cook up a false story before informing the police. Taking the argument a little further, counsel pointed out that the fact that when the parents and brothers of the deceased knocked the door of the bathroom in question as claimed by them and the appellant informed them as claimed by them that he had murdered the deceased as they were getting her married to someone else, said fact should have found mention in DD entry Ex.PW-4/1 and the absence thereof shows that the story cooked up by them is false. The second instance of the alleged unnatural conduct pointed by the learned Counsel was that Anil Garg PW-2 and Varun Garg

PW-3, deposed that they did not make an attempt to break open the door of the bathroom where the deceased was locked and that there was a gap of 20-30 minutes between the time when the factum of locking of the deceased in the bathroom came to their knowledge and the time of arrival of the police at the spot. According to the counsel, despite the fact that the parents and brothers of the deceased knew that the life of the deceased was in great danger, for according to them the appellant had told them that he had murdered the deceased as they were getting her married to someone else, their conduct of not attempting to break open the door of the bathroom in question for a period of 20-30 minutes and instead keep waiting for the police is most unnatural. The third instance of the alleged unnatural conduct pointed out by the learned Counsel was that the parents and brothers of the deceased did not lock the door of the bathroom in question from outside to prevent the appellant from escaping, for how would they know that the appellant would not try to break free.

C The next submission advanced by the learned Counsel for the appellant was that the case of the prosecution is marred by many improbabilities arising therein. The first improbability pointed out by the learned Counsel was that as many as eight injuries were found on the person of the deceased as recorded in the post-mortem report Ex.PW-9/1. According to the counsel, had the appellant inflicted eight injuries on the person of the deceased, the deceased would have cried or shrieked and the same would have attracted the attention of her parents and brothers. However, as per the prosecution, they did not even hear a whisper of cry of the deceased and that they came to know about the incident in question when they looked for the deceased when they could not find her anywhere in the house. The second improbability pointed out by the counsel was that the weapon allegedly used by the appellant to murder the deceased was an ordinary kitchen knife. Counsel pointed out that the appellant could have picked up said knife only from the kitchen of the house. Counsel submitted that Vibhor PW19, deposed that when the deceased arrived in the room where he i.e. Vibhor was being taught by the appellant, he i.e. Vibhor went to the kitchen to drink water and that thereafter when he came back to the room he did not find the appellant there and noticed that the door of the bathroom attached to the room was locked. Counsel submitted that in such circumstances, Vibhor would have seen the appellant picking up from

the kitchen the knife used to murder the deceased, which was not the position in the instant case. It was highlighted that it was just impossible for the appellant to have picked up the knife from the kitchen when Vibhor went to the kitchen and returned. It was submitted that the two i.e. the appellant and Vibhor would have crossed each other and Vibhor not so deposing means that the knife was never with the appellant. The third improbability pointed out by the learned Counsel was that no tutor would teach a child at 09.30 P.M. in the night.

D The next submission advanced by the learned Counsel for the appellant was that there are manifest errors in the impugned judgment. (i) The first error pointed out by the learned Counsel was that the learned Trial Judge has committed a patent illegality in holding that the circumstance that the appellant failed to prove that Tinny @ Tinnu came to visit him in jail and that Tinny @ Tinnu handed over the letters Ex.DW-4/1 to Ex.DW-4/17 to him leads to a conclusion that the accused is Tinny @ Tinnu and that the deceased had written the letters Ex.DW-4/1 to Ex.DW-4/17 to the appellant. According to the counsel, the only conclusion which could have resulted from the said set of circumstances was that the appellant failed to prove the existence of Tinny @ Tinnu. In said regards, the learned Counsel drew attention of the court to the fact that the parents and brothers of the deceased falsely denied that the letters Ex.DW-4/1 to Ex.DW-4/17 do not contain the handwriting of the deceased. According to the counsel, had the appellant been Tinny @ Tinnu, the parents and brothers of the deceased would not have denied that the letters Ex.DW-4/1 to Ex.DW-4/17 were written by the deceased for the said fact would have gone a long way in proving the guilt of the appellant. Counsel submitted that the fact that the parents and brothers of the deceased denied that the letters Ex.DW-4/1 to Ex.DW-4/17 were written by the deceased strongly suggests that the appellant was not Tinny @ Tinnu. Counsel then drew the attention of the court to the following recording contained in the letters Ex. Ex.DW-4/1-2 and Ex.DW-4/3-5 respectively: - (a) Varun shall tell you many things which would prove that I forgot you completely over there, that I am wrong you will beat me, scold me; (b) I used to start crying just as I started sending you kisses. (Mamiji saw those tears, the very first day); According to the counsel, the aforesaid writings goes to show that Varun, the brother of the deceased, and the maternal aunt of the deceased knew about the affair between the deceased and Tinny @

Tinnu. Counsel submitted that had the appellant been Tinny @ Tinnu, the family of the deceased would have ended all their relations with the appellant the moment it came to their knowledge that the deceased is having an affair with the appellant. As a limb of the aforesaid submission, counsel further contended that the learned Trial Judge has committed an illegality in heavily relying upon the circumstance that the defence taken by the appellant was false, to infer the guilt of the accused. Counsel submitted that it is settled legal principle that the circumstance of a false defence taken by an accused is a circumstance which, after the chain of the circumstances appearing against an accused is complete, can be added to the said chain to reinforce the guilt of the accused. In support of the said contention, the counsel relied upon the decision of Supreme Court reported as Sharad Birdhichand Sarda v. State of Maharashtra : AIR 1984 SC 1622. (ii) The second error pointed out by the learned Counsel for the accused was that the learned Trial Court wrongly came to the conclusion that the appellant had a lust for the deceased, for there was no evidence on record which could support said conclusion. Learned Counsel pointed out that none of the family members of the deceased deposed that the appellant had a lust for the deceased. On the contrary, Anil Garg PW-2 and Varun Garg PW-3, the father and brother of the deceased respectively, deposed that the appellant used to treat the deceased like his own daughter.

56. Keeping in view the defence taken by the appellant, in the instant case it would certainly be relevant whether the defence succeeds. The reason is obvious. The appellant has admitted his being arrested on being found inside the same bathroom in which the dead body of the deceased was found after the police reached the scene of the crime. Whereas the prosecution alleges that the appellant killed the deceased inside the bathroom and locked himself inside the bathroom, the defence alleges that after the deceased was killed, the appellant was entrapped to come to the house and was pushed inside the bathroom and kept confined till the police arrived.

57. Suffice would it be to state that where a person is murdered at a spot and the accused is apprehended at the spot itself, the accused has to render an explanation as to how the deceased was killed and if not such explanation is

rendered, the accused must admit the guilt. This is plain logic. The appellant has well understood the same and hence the defence of entrapment.

58. Thus, it can be safely be said that the instant case is akin to two trains running on parallel lines and the diversions for the destination being towards the fag end of the journey and hence a close look at the competing claims of the prosecution and the defence. Instant case is not of a kind where the defence is of alibi and hence the principle of law that irrespective of the proof of alibi, the prosecution has to prove its case of guilt beyond reasonable doubt being proved.

59. The most crucial aspect of the defence of the appellant is the mysterious Tinny @ Tinnu to whom the deceased has written numerous letters, proved to be in the hand of the deceased by the testimony of DW-4.

60. It is but apparent that the deceased was emotionally involved with somebody whom she referred to as Tinny and sometimes Tinnu. It is true that the parents of the deceased and her brother have denied the letters in question being written by the deceased, but the said denial has to be understood in the context of the traditional Indian society where premarital affair with a person of the opposite sex is considered as bad character and a dishonour to the reputation of the family. We read nothing more in the false denial by the family members of the deceased that the said letters were in the hand of the deceased.

61. Now, the letters Ex.DW-4/1 to Ex.DW-4/17 could be with the appellant only under two circumstances. One, on being written and handed over by the deceased to the appellant or as claimed by the appellant when Tinny visited him in jail along with two friends Raj and Suresh.

62. As is to be noted from para 19 above, in his application filed under Section 91 Cr.P.C., the appellant claimed that Tinny had met him in jail during visitors hours on a date between 2 1.4.1999 to 9.5.2000 and hence prayer was made to summon the jail record containing record of visits made by visitors to the jail inmates during said period.

63. It appears to be very innocent, but is rooted, in our opinion in a wicked mind, that the said application was filed on 6.9.2005 when the appellant knew that the jail records have been weeded out. We say so for the reason in the letter Ex.DW-5/PB written by the appellant to the parents of the deceased he has posted of his crafty skills by writing that he has created enough confusion and he is making a prayer to summon the jail record knowingly well that the same has been weeded out.

64. The fact that the appellant had these letters with him from the very beginning is evidenced by the fact that he confronted Anil Garg PW-2 with these letters on 8.5.2002.

65. The fact that nobody gave these letters to the appellant can be inferred from the fact that had they been so handed over to the appellant as claimed by him when Tinnu met him in the jail, the appellant would have immediately moved an application to preserve the jail record recording Tinnu's visit to the jail. The appellant did not do so. We reiterate that the contents of the letter Ex.DW-5/PB written by the appellant to the parents of the deceased are a reflection of his crafty mind. His claim that he was compelled and forced to write the letters Ex.DW-5/PA and Ex.DW-5/PB is preposterous keeping in view the sublime language, richness of content and the phraseology of the two letters which no jail inmate can compel another to write. The literary and the intellectual skill of the appellant is evidenced not only by the said two letters but even from the well-penned written arguments filed by the appellant in Court in his own handwriting and the fact that those whom he taught as a private tutors got admissions in IITs and MBA Institutes of repute as claimed by the appellant himself.

66. Having held that the appellant failed to prove that a person named Tinny @ Tinnu met the appellant in jail and handed over the letters Ex.DW-4/1 to Ex.DW-4/17, the question which arises is how come letters written by the deceased to Tinny @ Tinnu came in possession of the appellant.

67. Was it that the appellant is none else but Tinny @ Tin n u?

68. The name of the appellant is Uttam. Remove the letter 'U' from Uttam and one is left with 'ttam'. Lovingly, it is easy to transform Uttam to Tinny and Tinny to Tinnu.

69. The letters Ex.DW-5/PA and Ex.DW-5/PB written by the appellant to the family members of the deceased also provide a clue regarding the identity of Tinny @ Tinnu.

70. The letter Ex.DW-5/PA records that the mother of the deceased can collect letters written by the deceased, 50 in number, from the appellant. The appellant only produced 17 letters written by the deceased. What about the remaining 33 letters? Why did the appellant withhold remaining 33 letters written by the deceased?

71. The letter Ex.DW-5/PB written by the appellant to the parents of the deceased records that the deceased was the 'soul' of the appellant. This is an expression used by lovers for each other.

72. Love songs and love letters are best comprehended only by the lovers. They carry scuttle messages and meanings. Code words and code language is used. The metaphors are intended to convey signals which only the opposite can receive and download. Unless assisted by linguistic and psychology experts it may be difficult for a Court to fathom the real meaning of such letters. But, what is relevant for us is the fact that the deceased has expressed not only her love for Tinny but even the anguish that she would never be able to be his.

73. In paras 23 to 27 above, we have noted extracts of some of the letters written by the deceased to Tinny @ Tinnu and they show that the deceased realized the mess in which she was. It shows that she was conscious of the fact that her relationship with Tinnu would just not be acceptable to anyone.

74. The young girl was a student of the IInd year undergoing her graduation course. As claimed by the appellant and not denied by the family members of the young girl, the appellant had been her tutor for years together and thereafter for the younger siblings. The young girl was obviously besmitten by the intelligence of

her tutor and so was the tutor. Whereas the young girl realized that she was helpless and hence allowed herself to be drifted, hoping that the currents would anchor her, the appellant acted coldly and with precision.

75. The post-mortem of the deceased was conducted at about 11.35 A.M. on 20.04.1999 as recorded in the postmortem report Ex.PW-9/1 of the deceased. The post-mortem report Ex.PW-9/1 records that the death of the deceased had taken place 12 hours prior to the conduct of post-mortem. Therefore, as per the post-mortem report, the deceased died at about 11.35 P.M. on 19.04.1999. It is a recognized fact that an error of plus or minus 2 hours could be taken in the instant case in fixing the time of death. In that view of the matter, it has to be taken that the deceased died any time between 09.35 P.M. on 19.04.1999 to 01.35 A.M. on 20.04.1999.

76. The daily diary entry Ex.PW-4/A shows a call made at the police station at 11:20 in the night pertaining to the incident and thus we have empirical evidence wherefrom it can safely be said that the deceased was killed prior to 11:20 PM. Thus, the probable time of death could be any time between 9:30 PM to 11:20 PM. It was urged that as per Vibhor and the other family members the crime took place at 9:30 PM, which is the time recorded as that of occurrence even in the rukka. Thus, there is empirical evidence of the crime being committed at 9:30 PM. Submission made was that the family has taken 1 hour and 50 minutes time to inform the police and this means that something was being brewed. Obviously, the suggestion was that what was being brewed was: whom to entrap.

77. Now, the family members have deposed that the deceased returned to her house with her mother after shopping at 9:30 PM. Thereafter, as deposed to by them, the various articles purchased during shopping were removed from the car and were kept inside a bedroom in the house. The shopping was not ordinary shopping and was not that of only one or two articles. The deceased was to get married shortly and the shopping was of her dowry articles. Nobody has spoken as to how many articles were purchased, but presumably they were many. Thus, time would be consumed to bring the purchases inside the bedroom. Nobody has said that the deceased immediately walked up to the room of Vibhor. Nobody has said

that they looked at their watches to identify the time being 9:30 PM. It is apparent that as is usually to be noted in most cases, the time 9:30 PM got fixed on rough estimates by all as time when the deceased returned home with the mother and not taking into account the time spent in removing the purchases from the car and bringing the same inside the bedroom and ignoring the fact that may be the deceased went after sometime to the room where Vibhor was taking tuition. Further, as deposed by the family members, when Vibhor and his father went to the room where Vibhor was taking tuition and saw neither appellant nor the deceased in the room, they thought that the appellant was in the bathroom and the deceased may have walked away. Only when the deceased was nowhere to be seen in the house and the appellant remained inside the bathroom, was the suspicion raised that something was amiss. Apparently, further time was consumed in this process, removing the said event further away from 9:30 PM. But, freezing the time at 9:30 PM, everybody started talking of the crime being committed at 9:30 PM. This got reflected even in the rukka dispatched from the house.

78. Thus, it would be useless to predicate an argument as if 9:30 PM was the time when the crime was detected.

79. Returning to the time when the deceased returned home with her mother at 9:30 PM, and the same being a simple estimation, well, the time of return could well be around 9:45 PM. Giving time of 5 to 10 minutes to unload the purchases from the car and bring them inside and further 10-15 minutes time for the deceased and her mother to check that everything was brought inside and discounting sometime for the deceased to walk to the room where Vibhor was being taught by the appellant, discounting further time for Vibhor and his father searching for the deceased and then realizing that something was amiss in the appellant continuing to be in the toilet and then detecting as to what had happened, it is possible that by the time the crime was detected it was around 10:45 or 11:00 PM.

80. Thus, it is apparent that the crafty appellant is building a defence picking up a nut here and a bolt there.

81. If the defence of entrapment is considered, it would mean that the deceased was killed by her father and her brother out of anguish and frustration and having realized what they did, obviously an escape had to be found. The two and the remaining family members put their heads together to think a way out. Could the body be disposed of? If yes, how? If not, why? If not, what to do? Whose help can we take? Can we bribe somebody to accept the guilt? If yes, who? Would not all such alternatives being discussed require time? We think it would. What would be the reasonable time? Well, keeping in view that respectable persons had murdered their daughter, it would be troubled and puzzled minds; minds under fear which would be thinking. These minds would have no focus, much less a logic. To arrive at a consensus, these troubled minds would not be expected to arrive at a solution within reasonable dispatch.

82. Now, assuming that these troubled minds arrived at a solution to falsely entrap somebody, it had to be further pondered over as to who should be ensnared. Various alternatives of ensnaring and the person to be ensnared had to be discussed. He had to be an easy target. Is it believable that these troubled minds would have contrived to design that let appellant be the victim. It is preposterous to so believe and accept. For this to have happened would mean that the family members of the deceased were cock sure that the appellant would be in his house and would immediately come on being summoned. What is the material before us that the family members were sure that the appellant was in his house and would immediately come on being summoned? None.

83. As per the appellant and even as per the parents of the deceased, the appellant was a man of their confidence and they believed that he treated their children as his own. It is difficult to believe that sharing such relationship of trust and confidence the family members of the deceased would strike a wicked plan to falsely entrap the appellant.

84. That leads us to another scenario. The police arrived in the house by around 11:40 PM and admittedly the appellant was inside the bathroom with the dead body of the deceased inside. Though no witness has so stated and there is no evidence on record, but learned Counsel for the appellant and the State informed

us that the house where the appellant resided was at a distance of about 10 minutes drive from the house of the deceased. Thus, at least 20 minutes would be consumed to make a visit to and fro from the house of the deceased to that of the appellant and back. Given the fact that the appellant would have spent a minimum of minute or two in his house before embarking on his journey to reach the house of the deceased, on being summoned by her parents, about 22 minutes further time needs to be added while adding up the time to probablize what could have happened. That by 11:20 PM information was passed on to the police means that the family members of the deceased had entrapped the appellant inside the bathroom in their house by 11:20 PM and this means that the process of sending somebody to fetch the appellant had commenced by around 10:50 PM. Going backwards, the process to think about all the alternatives and rule out the worst and pick on the best needs to be over within less than 30 minutes and under the circumstances we hold the same to be most impractical and unreasonably less for a conspiracy of the magnitude to be hatched.

85. Was it not easy for the family members to entrap any servant in the house? Why pick on the appellant

86. It is true that Insp. J.S. Gill PW-18 ought to have tried to ascertain as to what happened to the buttons on the shirt of the appellant which had broken. It would have been advisable to have searched for the buttons and picked them up. But, for a lapse committed by the investigating officer, it cannot be said that a case otherwise proved should be thrown out.

87. Insofar as the argument that the photographs Ex.PW12/12 and Ex.PW-12/13 show the door of the bathroom in question in an intact condition and hence the claim of the family members of the deceased and the police officers that the door was broken into is false and this probablizes that the door was never locked from inside; relevant would it be to note that Anil Garg PW-2 and Const. Bhoora Singh PW-13 deposed that the bolt on the inner side of the door in question got broken when the police applied pressure to break open the said door. Thus, the testimony of aforesaid witnesses clarifies the position that it was the bolt on the inner side of the door which got broken. As already noted herein above, there are two

photographs of the door in question; being Ex.PW-12/12 and Ex.PW-12/13. The photograph Ex.PW-12/13 shows the inner side of the door in question i.e. the position of the door when photographed while standing inside the bathroom, while the photograph Ex.PW-12/12 shows the outer side of the door in question i.e. photographed while standing inside the bedroom. Therefore, it is the photograph Ex.PW-12/12 which is relevant for the purposes of the present argument. The bolt is at the top of the door. A minute look at the photograph Ex.PW-12/12 shows that the bolt-hole is present on the beading of the door. A bolt-hole is affixed to the wooden frame on the side whereof the door is hinged. The photograph Ex.PW-12/12 shows the bolt-hole on the inner side of the door in question in a dislodged condition. What appears to have happened is that when the door was pushed from outside the bolt-hole gave way as the screws which had secured the same to the frame gave way and the bolt-hole remained embracing the bolt and when the door was shut, along with the bolt, the bolt-hole came back to the same position where it originally was, creating an elusion of it being at the same place. Now, this could not have happened for the obvious reason where the bolt is moved upwards to secure it inside the bolt-hole, it is only then that a door gets locked. If the bolt was secured inside the bolt-hole on the door in the side of the bathroom, nobody could have entered inside as the door would not have opened.

88. We wonder as to what is the factual basis for the argument that there is mismatch at the place where the vest of the appellant which was seized when he was arrested got stained with blood vis-a-vis the shirt. There is no material for us to discuss said argument and thus we reject the same as also the argument of planting.

89. Is the learned Counsel for the appellant right in contending that the opinion Ex.PW-9/2 implies that only injuries Nos. 1 and 2 found on the person of the deceased were caused by the knife recovered from his possession and that the remaining injuries found on the person of the deceased was caused by another weapon? We do not think so. Since only injuries Nos. 1 and 2 found on the person of the deceased were responsible for the death of the deceased, Dr. Komal Singh PW-9, thought it proper to give his opinion with respect to the weapon of offence only in respect of said two injuries. Realizing that the opinion Ex.PW9/2 does not

give an opinion with respect to the weapon of offence regarding all the injuries found on the person of the deceased, the investigating officer rightly thought it proper to obtain further opinion in respect of the remaining injuries on the person of the deceased. In that view of the matter, we find nothing suspicious in two opinions Ex.PW-9/2 and Ex.PW-9/3 being obtained from Dr. Komal Singh regarding the weapon of offence.

90. Regarding the argument that Dr. Komal Singh gave the opinion Ex.PW-9/3 without even looking at the knife recovered from the possession of the appellant, suffice would it be to note that Dr. Komal Singh penned the opinion Ex.PW-9/2 on the back page of the post-mortem report Ex.PW-9/1 and he also drew the sketch of the knife in question on the said page. Dr. Komal Singh deposed that he perused the post-mortem report while giving the opinion Ex.PW-9/3. It is thus apparent that Dr. Komal Singh gave the opinion Ex.PW-9/3 after examining the sketch of the knife in question. In that view of the matter, nothing turns upon the fact that Dr. Komal Singh did not look at the knife recovered from the possession of the appellant when rendering the opinion Ex.PW-9/3.

91. The argument that the sickle shaped injury found on the person of the deceased i.e. injury No. 8 could not have been caused by the knife recovered from the possession of the accused requires it to be noted that the knife in question, sketch whereof is Ex.PW-2/3, is a knife tapering towards the tip. Total length of the knife is 12.6 cm. The length of the blade is 7.6 cm. Therefore, the tapered portion of the knife could have caused the sickle shaped injury found on the person of the deceased. We find that Dr. Komal Singh was not given any suggestion that injury No. 8 could not have possibly been caused from the knife in question.

92. Regarding non-joining of Satish Garg and his family members when the police came to the spot, suffice would it be to state that the father of the deceased deposed that Satish Garg was not present in the house at the time of the occurrence as he had gone to distribute the invitation cards for the marriage of the deceased. Thus, merely because Satish Garg resided on the ground floor of the same building is an irrelevant fact and cannot be used as a ground to urge that a material witness has been withheld.

93. That as many as six policemen accompanied Inspector J.S. Gill to the spot being used as an argument to urge that usually three police officers leave the police station when a crime is reported, it is important to note the contents of DD entry Ex.PW-4/1. As already noted herein above, DD entry Ex.PW-4/1 records that the father of the deceased informed that the appellant has locked the deceased in a bathroom and that he is not opening the door inspite of repeated knocking at the door. Considering the fact that the deceased was locked in a bathroom by the appellant and thus he would require manpower to break open the door, Inspector J.S. Gill must have thought it proper to take more policemen with him to the spot. Therefore, there is nothing suspicious in the fact that six policemen accompanied the investigating officer to the said spot.

94. No question was put to Insp. J.S. Gill as to why he took six policemen along with him. Had one been asked, an answer would have come and then we would have found some scope for a debate, whether the answer was convincing. It is settled law that without questioning a witness on a point of controversy and eliciting a response, no argument can be built on said controversy by hinging the controversy on surmises and conjectures.

95. The submission that it was unnatural conduct for the family members of the deceased to not break the door of the bathroom when they knew that the appellant was inside the bathroom with the deceased, though attractive at first blush, ignores that as deposed to by the family members, the appellant had told them from inside that he had killed their daughter and thus, overcome by grief, fear and anxiety they could think of no better than to inform and summon the police and do no more. We do not think that so unnatural is the conduct that it renders the family members without any merit of credit. The argument that this fact does not find mention in the DD entry Ex.PW-4/A, it is sufficient to note that DD entries are always cryptic and not descriptive.

96. The argument that it was highly improbable that the parents and the brothers of the deceased did not hear even a whisper of cry of the deceased when the appellant assaulted her ignores the possibility of the appellant taking the deceased by complete surprise and inflicting injuries Nos. 1 and 2 on her person before she

could react and by said time she was rendered speechless. Being a male, the appellant could have muffled her voice with his hand placed on her mouth.

97. Do we not come across cases day after day where brutal crimes are committed with victims beaten to pulp and yet nobody in the vicinity has heard their cries? We have. It is also not unknown for victims to be rendered speechless when suddenly placed in a hostile situation.

98. The argument that the appellant could not have picked up the knife used by him for murdering the deceased from the kitchen of the house of the deceased without Vibhor noticing the same is premised on the assumption that the knife was picked up from the kitchen. No suggestion has been given by the appellant to any family member that the knife belonged to them or was in the kitchen. It is possible that the appellant took the knife with him hoping to get an opportunity to do what he did. It is possible that the knife was already in the bedroom. It is a kitchen knife no doubt. Such kinds of knives are placed in the dining room and are sometimes carried inside the bedroom to cut or peel fruit. Thus, the argument anchors itself nowhere.

99. The argument that nobody takes tuition at 9:30 PM is neither here nor there for the reason Vibhor the person who claims as being taught by the appellant has not even been given a suggestion that he has falsely deposed that the appellant was imparting tuition to him at 9:30 PM when his sister and mother returned after shopping from the market. Thus it stands established that the appellant was already in the house at 9:30 PM. If this be so, the version of false entrapment falls flat.

100. The argument predicated on the denial by the family members of the deceased that the letters Ex.DW-4/1 to Ex.DW-4/17 were not in the handwriting of the deceased, denials which were proved to be false through the testimony of DW-4, takes the case of the appellant not an inch forward for the reason in a conservative Indian society, as already opined by us hereinbefore, an affair with the opposite sex is considered by some families as unchaste behaviour; it is thought to be shame upon the family and hence the desire to suppress the truth. It is obvious that the family members of the deceased were saving their perceived

family honour.

101. Do the contents of the letters Ex.DW-4/1-2 and Ex.DW4/3-5 show that the brother of the deceased i.e. Varun and the maternal aunt of the deceased were aware of the fact that the deceased was having an affair with the accused?

102. The argument was advanced to bring home what? We do not understand.

103. Had they known so, the fact that the appellant is a married person and was more than twice the age of the deceased would have immediately led the family members of the deceased to declare the appellant a persona non grata in their house, which they did not do. It is obvious that neither Varun nor his aunt know anything about the liking which the appellant had for the deceased and vice versa.

104. We have already commented hereinabove the intricacies involved in understanding the subtle undercurrents in love letters and especially when the writer has to hide his/her true feelings. Save and except to gather that the writer of the letters i.e. the deceased was torn apart as a result of her love for the addressee (the appellant) of the letters, we can read no further except that the deceased realized that her brother Varun and her maternal aunt had sensed out something amiss in the joy of life of the deceased; but what that was has not surfaced. Surely not the fact that Varun and his aunt knew about the relationship between the appellant and the deceased.

105. The fact that the parents of the deceased have deposed that the appellant used to treat the deceased as their daughter shows that they believed that as a teacher the appellant was as good as a parent to their child. This itself establishes the fact that nobody suspected anything and it is a case of a crafty man warming and worming into the heart of a young girl and emotionally and may be physically exploiting her.

106. The testimony of the parents Anil Garg PW-2 and Uma Garg PW-10, and the brothers Varun Garg PW-3 and Vibhor Garg PW-19 of the deceased, as also the police officers who participated in the spot investigation namely Const. Bhura Singh PW-13, Const. Giri Kumar PW-14, Const. Mukesh PW-15 and SI Mukesh

Kumar PW-17 and Inspector Jeewan Singh Gill PW-18 establishes that the appellant was found standing in the bathroom which was locked from inside and where the deceased was found dead and that he was holding a knife in his hand at that time. The aforesaid witnesses were cross-examined in extenso by the defence but nothing could be brought out which could cast a blemish on their evidence.

107. There is yet another significant fact which needs to be noted. As already stated herein above, save and except giving suggestion to Vibhor that the appellant used to impart tuitions to him between 5.00 P.M. to 6.00 P.M. and general suggestions pertaining to false implication of the appellant Vibhor was not cross-examined with respect to essential portion of his testimony. Thus, the essential portion of the testimony of Vibhor has virtually gone unrebutted.

108. In the decision reported as Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. and Anr. : AIR 1958 Punjab 440 it was observed as under:

It is a well established rule of evidence that a party should put to each of his opponent's witnesses so much of his case as concerns that particular witness.

If no such questions are put, the Courts presume that the witness' account has been accepted. If it is intended to suggest that a witness was not speaking the truth upon a particular point, his attention must first be directed to the fact by cross-examination so that he may have an opportunity of giving an explanation. In *Browne v. Dunn* (1893) 6 R 67 (A), Lord Herschell observed:

I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit,

I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with the witnesses.

109. From the above conspectus of facts, the only conclusion which results is that the appellant is the murderer of the deceased.

110. It assumes some significance to note that the letter Ex.DW-5/PB written by the appellant to the parents of the deceased has traces of admission of guilt, but we do not use the same as an extra judicial confession for lack of clarity of admission in unequivocal terms thereof.

111. We conclude by recording that the written submissions filed by the appellant in his own handwriting and the letters written by him to the parents of the deceased show a very crafty and a very fertile mind. The intelligence quotients of the appellant is of the highest order and as indeed bragged by him in one of his letter he has given a run for the money to a seasoned criminal lawyer of the stature of Shri R.N. Mittal, Senior Advocate who was appointed as a Special Public Prosecutor in the instant case. It is apparent that the appellant has near successfully built a defence around the lapses committed by the prosecution on two points, firstly in not searching for the three buttons which were broken from the shirt of the appellant and secondly the investigating officer not seizing the bolt-hole with the screws coming loose when the door of the bathroom was pushed open. It is obvious that entry into the bathroom could not be effected without the door being opened and this was possible in the instant case when due to the push the bolt-hole came off from the door frame as the screws gave way when pressure was applied on the door. It was common sense for the investigating officer to have seized the bolt-hole and the screws. But, with pain and anguish we must write that in 4 out of 10 cases we are seeing errors of stupidity committed by the investigating officers which have to be overlooked as aberrations by us for the reason it is the duty of the Court to balance public interest in the administration of justice requiring the exception to be applied to the exclusionary rule of excluding

from consideration the investigation which is otherwise without taint. Indeed, it is time for the police to think and find an answer as to why in 4 out of 10 movies in India where there is some role of a policeman in the theme, the policeman is shown as a BUFFFON.

112. We dismiss Crl. Appeal No. 433/2007 filed by the appellant Uttam Kumar.

113. As regards the Cross Appeal filed by the State, noting that the prayer made therein is to enhance the sentence, noting that the learned Trial Judge has himself directed that the appellant shall undergo imprisonment for life and while exercising the power to commute or remit the sentence the decision of the learned Judge, which brings out in the very first paragraph the evilness and depravity in the crime, would be placed before the Executive, meaning thereby the appellant would not earn his freedom on completing 14 years imprisonment, we feel that no case is made out to enhance the sentence by awarding death penalty.

114. Thus, Cross Appeal filed by the State is also dismissed.

115. Both appeals are dismissed.

116. Since the appellant Uttam Kumar is in jail we direct that a copy of this decision be sent to the Superintendent, Central Jail Tihar to be supplied to the appellant.

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