

Narayan Debnath Vs. the State of Assam

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Court : Guwahati

Decided On : Jul-23-2009

Reported in : 2010CriLJ275

Judge : J. Chelameswar, C.J. and; I.A. Ansari, J.

Appellant : Narayan Debnath

Respondent : The State of Assam

Disposition : Appeal dismissed

Judgement :

I.A. Ansari, J.

1. By judgment and order, dated 30-11-2002, passed in Sessions Case No. 129(N)/2002, by the Additional (Ad hoc) Sessions Judge, Sankardev Nagar, Hojai, the appellant herein, namely, Sri Narayan Debnath, stands convicted under Sections 302 and 201, I.P.C. and sentenced to suffer for his conviction under Section 302, I.P.C., imprisonment for life and pay a fine of Rs. 3,000/- and in default of payment of fine, suffer rigorous imprisonment for a period of six months and to undergo, for his conviction under Section 201, I.P.C. rigorous imprisonment for a term of three years and pay fine of Rs. 500/- and in default of payment of fine, suffer rigorous imprisonment for a period of 15 days, both the sentences having been directed to run concurrently.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described thus:

(i) As a result of strained relation with his wife, Lalita, the accused beat his wife and drove her away with their two children, both the children being very young and, in fact one of them being almost a suckling baby. Having driven away his wife, Lalita the accused married another woman and started living with her.

(ii) On being driven out of her matrimonial house by her husband, Lalita took shelter at the house of her sister, at Baithalangsua, and started living there along with her two female children. On 2-10-1999, i.e., the day preceding the day of election, which took place on 3-10-1999, Lalita along with her children, came to the house of her brother-in-law, PW 1 (Rabindra Debnath), whose house is at a distance of about one k.m. from the house of the accused. Lalita stayed, at the house of PW 1 with, her children for the night on 2-10-1999, so that she could cast her vote on the following day.

(iii) On the day of election, i.e. 3-10-1999, leaving her elder child with PW 1 at his house Lalita went out with her younger child, to cast vote. About a week before the election, the second wife of the accused had gone to her mother's house and was not present on the day of the election at the house of the accused. Having cast her vote, when Lalita, accompanied by PW 2 (a neighbour of the accused) was returning, she was carrying her younger baby in her arms. Leaving the baby in the arms of PW2 on the road, Lalita went to purchase biscuits from a nearby shop for the child, whom she had left at the house of her brother-in-law (PW'1). After purchasing biscuits, when Lalita was, proceeding further with PW 2, the accused arrived there and forcibly took Lalita to (his house, though Lalita kept resisting, kept about half-an-hour, PW 2 happened to meet Lalita at the tube-well, located near their house, where Lalita had come to fetch water. Near the said tube-well, Lalita told PW 2 that she was apprehending risk to her life. PW 2, however, consoled Lalita by saying that the accused would not do anything wrong to her, whereupon Lalita went back to the house of the accused carrying water. Even to PW 4 (Saraswati), another neighbour of the accused, Lalita told, at the said tube-well, that she was apprehending risk to her life, but PW 4 too consoled Lalita and

advised her to stay with her husband and, upon being so advised by PW 2 and PW 4, Lalita went back to her husband's house carrying water.

(iv) On the day of election, i.e. on 3-10-1999, Maheswari (PW 3), a neighbour of the accused, went to the police, where she had left her goat for grazing. The place was at a distance of about 40 feet from the house of the accused. When PW 3 reached the said place, she heard someone screaming. 'Mago' (i.e., Mother), from the direction of the house of the accused and on looking towards the said direction, PW 3 noticed Lalita lying on the ground and a short while thereafter, the accused dragging Lalita to his house. At around tire time, when PW 3 (Maheswari) had gone to the place, where her goat had been left*for grazing, PW 4 too had gone there to collect her cattle. She (PW 4) too heard someone screaming, 'Mago' (i.e., Mother), and she too saw Lalita being dragged by the accused into his house. In fact, about half-an-hour after Lalita had gone back to the house of the accused carrying water, PW 2 too heard Lalita screaming, 'Oh Mago' (i.e. Oh! Mother), and thereafter PW 2 heard nothing.

(v) As Lalita did not come back to the house of her brother-in-law (PW 1), PW 1 became worried, particularly, because the child, whom Lalita had left, at the house of PW 1, spent the whole night crying. On the following day at about 7 O'clock, in the morning, PW 1 along with the said elder child of Lalita, proceeded to wards the house of the accused in search of Lalita. Before, however, PW 1 could reach the house pf the accused, PW 1 happened to meet PW 2 and was informed by her that at about 4/4.30 p.m., on the previous day, i.e., 3-10-1999, the accused had forcibly taken away Lalita to his house and, a short while thereafter, PW 2 had heard Lalita screaming and that she (PW 2) had heard nothing further. PW 2 asked PW 1 to go to the house of the accused and make necessary inquiry. On being so informed, when the PW1 was proceeding towards the house of the accused, PW 1 found he accused coming and when PW Tasked the accused about Lalita, the accused told him that leaving her baby at the house of the accused, Lalita had already left for the house of PW 1 to bring back her elder child; whom she (Lalita) had left, on the day of the election, at the house of PW 1. When PW 1 told the accused that Lalita had not come back to the house of PW1, the accused told PW 1 that Lalita might have gone to Baithalangu.

(vi) As PW 1 did not believe the version of the accused, he, taking along with him, Lalita's younger child, came back to his house and, leaving the child there, he went to Hojai Police Station and reported there about what had happened. PW 1, accompanied by the police, came to the house of the accused. Upon noticing policemen coming, the accused started running away and while he was descending to a beel (swamp), the people from the neighbourhood chased the accused and caught hold of him.

(vii) On being questioned by the police, the accused told them that he had kept Lalita's dead body buried at the bank of the pond, which is located within the compound of his house. Acting upon what the accused had told them, the police disinterred Lalita's dead body. Before, however, the dead body was recovered, PW 1 lodged a written information with the police, at the said police station, which came to be registered as an FIR. Police held inquest over the dead body of Lalita. Post mortem was also conducted on the said dead body. The post mortem examination revealed that Lalita had sustained injuries on her waist, back and head. The head injury, which had given rise to haemorrhage, became the cause of Lalita's death. On completion of investigation, police laid charge-sheet against the accused under Sections 302 and 201, I.P.C.

3. During trial, charges under Sections 302 and 201, I.P.C. were framed against the accused. The accused pleaded not guilty to both the said charges. In support of their case, prosecution examined eight witnesses including the doctor. The accused was, then, examined under Section 313, Cr.P.C., and in his examination aforementioned, the accused denied that he had committed the offences, which were alleged to have been committed by him, the case of the defence being an admixture of total denial and a plea of alibi. The accused also adduced evidence by examining two witnesses including his own self. Having found the accused guilty of the offences charged with the learned trial Court convicted him accordingly and passed sentences against him as mentioned hereinabove. Aggrieved by his conviction and the sentences, passed against him, the accused has preferred this appeal.

4. We have heard Mr. S. Chamaria, learned Counsel, as Amicus Curiae, and Mr. Z. Kamar, learned Public Prosecutor, Assam.
5. Let us, first, deal with the evidence of PW 1. According to his evidence, his house is at a distance of about one kilometer from the house of the accused and about 5/5 years back, accused had beaten his wife, Lalita, and driven her out of his house, whereupon Lalita took shelter with her two children at the house of her sister at Baithalangsuo, and started living there. In the meanwhile, the accused married another woman and started living with her. Apart from the fact that the evidence, so given by PW 1, was never disputed by the defence, PW 2, whose house is adjacent to the house of the accused, too, has deposed that the accused had driven away his wife, Lalita, by beating her and Lalita used to, therefore, live with her children at her sister's house, at Baithalangsuo, and that after driving away Lalita, the accused married another woman, who about 7 days before to the day of occurrence, went away to her house. The evidence so given by PW 2 too remained undisputed. Thus, at the relevant point of time on being driven out of her matrimonial house by her husband, Lalita had been living at the house of her sister at Baithalangso with her children.
6. It is in the evidence of PW 1 that on the previous day of the election, Lalita came to the house of PW1 from the house of her sister, at Baithalangso, and stayed for the night at the house of PW 1. It has been clarified by PW1, in his evidence, that Lalita had come to spend the night, at his house preceding the day of the election to cast her vote.
7. It is also in the evidence of PW1 that when he come home after casting his vote, Lalita, leaving with him her elder daughter, went with her younger child, to cast her vote, but did not come back to his house. Lalita's elder child whom Lalita had left at the house of PW 1, spent the night crying as she continued to look for her mother.
8. From the evidence of PW 1, what clearly transpires is that Lalita, leaving her elder child at the house of PW1, went along with her younger baby girl to cast vote, but did not come back to the house of PW 1. The evidence, so given by PW 1, has remained completely unshaken in his cross-examination.

9. Close on the heels of the evidence of PW 1 is the evidence of PW 2, whose evidence is that on the day of election, when she (PW 2) and Lalita, after casting vote, were returning, Lalita was carrying her baby in her arms. It is in the evidence of PW 2 that leaving with her (PW 2), Lalita's younger baby, whom Lalita had been carrying in her arms, Lalita went to purchase biscuits from a nearby shop for her elder daughter, whom she had left at the house of PW 1. It is also in evidence of PW 2 that when Lalita came back after purchasing biscuits; the accused arrived there and though Lalita was unwilling to go with the accused, the accused forcibly took Lalita to his house.

10. The evidence, so given by PW 2, makes it clear that Lalita had purchased biscuits, obviously, with the intention to go back to the house of her brother-in-law (PW 1), where she had left her elder child. No wonder, therefore, that she was unwilling to go back to the house of her husband, where she had ceased to live on being beaten and driven out of the house by her husband. PW 2 has deposed that after about half-an-hour, Lalita came to take water from the tube-well, located near the house of PW2, and she told PW 2 that she was apprehending danger to her life, but PW 2 consoled her by saying that the accused would cause no harm to her and, Lalita, then, went to the house of the accused carrying water. PW 2 has also deposed that after about half-an-hour thereafter, she heard Lalita screaming 'Oh Mago' (i.e. Oh! Mother), and then, she (PW 2) heard nothing else. We have closely scrutinized the cross-examination of PW 2 at the hands of the defence but we find that except offering some suggestions to PW 2, which PW 2 denied, the defence hardly cross-examined her and could, therefore, elicit nothing to show that her evidence cannot be trusted.

11. Before proceeding further, we may pause and look into the evidence of Maheswari (PW 3), whose house is also located by the side of the house of the accused. According to her evidence, she, along with Saraswati (PW 4), went to change the place of grazing of her goat, the place, where her goat had been left for grazing, being at a distance of about 40 feet from the house of the accused. It is in the evidence of PW 3 that when they reached the place, where her goat had been left for grazing, she heard someone screaming, 'Mago' (i.e., Mother), from the direction of the house of the accused and when she looked towards the house

of the accused, she found Lalita lying on the ground and, a short while thereafter, she saw the accused dragging Lalita to his house and, on the following day, when police came and disinterred the dead body of Lalita from the pond of the accused, she went to the said pond and saw injuries on the head of Lalita. Nothing could be elicited by the defence to show that the evidence of PW 3 cannot be believed or should not be relied upon. We see, therefore no reason to disbelieve her evidence.

12. Broadly in tune with the evidence of PW 3, PW 4 (Saraswati) has deposed that after Lalita had left the house of the accused, the accused had married, but his second wife was not present at the-time of the occurrence as she had gone to her mother's house for a few days and the accused used to be alone in the house. It is in the evidence of PW 4 that she met Lalita, when Lalita, after having cast her vote, came, in the afternoon, to take water from the tube-well, located near her house, and Lalita told her that she was scared and wanted to leave the house of the accused, but she (PW 4) told Lalita that she (Lalita) should stay in the house of her husband and nothing would happen.

13. What is, now, important to note in the evidence of PW 4 is that according to her evidence at about 4.00 p.m., on that day, she (PW4) and Maheswari (PW 3) had gone to bring their cattle and When they were returning, she heard a woman screaming from the direction of the house of the accused and, on looking towards the said direction, she saw the accused dragging Lalita and, on the following day, when police came, she went there and saw the dead body of Lalita. In the case of PW 4, there was virtually no cross-examination except putting some suggestions to her, which she denied; consequently her evidence too remained unshaken.

14. From a close reading of the evidence of PWs. 1, 2, 3 and 4, which we find to be simple, coherent, consistent and not unnatural, what clearly emerge is that on the day, previous to the day of election, Lalita came, with her two children, to her village to cast her vote and stayed at the house of her brother-in-law (PW 1) and, on the day of election, leaving her elder daughter, at the house of PW 1, Lalita went, carrying her younger body, in her arms, to cast vote and did not come back to the house of PW 1 again. From the unshaken evidence of PW2, whose house is

adjacent to the house of the accused, what transpires is that when Lalita, having cast her vote, was returning with PW2, Lalita, leaving her daughter with PW2, went to buy some biscuits from a nearby shop for her elder daughter, whom she had left at the house of PW1. Obviously, Lalita's intention was to go back to her brother-in-law's house along with biscuits for her elder daughter. What is, now, important to note is that after buying biscuits, when Lalita came back, the accused arrived there and forcibly took Lalita to his house. After about half-an-hour, Lalita came to take water from the tube-well, located near the house of PW 2, and told PW 2 that she was apprehending danger to her life, but PW 2 consoled Lalita by saying that the accused would not do anything wrong and Lalita went back to the house of the accused carrying water. Even PW 4, a neighbour of the accused, has, in tune with the evidence of PW 2, deposed that she (PW 4) happened to meet Lalita near the said tube-well and Lalita told her (PW 4) that she was scared and wanted to leave the house of the accused, but PW4 told Lalita that she should stay with her husband and nothing would happen to her. The evidence, so given by these two witnesses, as we have already indicated above, remained completely unshaken and inspire confidence.

15. What is, now, of immense importance to note is that according to the evidence of PW 2, after about half-an-hour of Lalita having gone back to the house of the accused, carrying water, she (PW 2) heard Lalita screaming, 'Oh Mago' (i.e. Oh! Mother) and, thereafter, she heard nothing. Bearing this aspect of the evidence of PW 2 in mind, when we turn to the evidence of PW 3, we notice that when she (PW 3) came to the place, where her goat had been left for grazing, she (PW 3) heard the scream, 'Mago' (i.e., Mother), raised from the direction of the house of the accused and, on looking towards the direction of the house of the accused, she noticed Lalita lying on the ground and, a short while thereafter, the accused dragging Lalita into his house. To the same effect is the evidence of PW 4 inasmuch as she, too, has deposed that while she was gathering her cattle, she heard a woman screaming, 'Mago' (i.e., Mother), the voice coming from the direction of the house of the accused and she noticed the accused dragging away Lalita.

16. Bearing in mind the above evidence given by PWs. 1, 2, 3 and 4, when we revert to the evidence of PW1, we notice that when Lalita, having cast her vote, did not return to his house, he had to keep consoling Lalita's elder daughter, whom Lalita had left at the house of PW1, because Lalita's elder daughter kept crying, whole night, looking for her mother. It is in the evidence of PW 1 that on the following day, at about 7 O' clock in the morning, when he was proceeding towards the house of the accused in search of Lalita, he (PW 1) happened to meet PW 2, who reported to him that at about 4/4.30 p.m. on the previous day, the accused had dragged Lalita from the path towards his house and, a short while thereafter, she had heard Lalita screaming and, then, she had heard nothing and that he (PW 1) should go there and make inquiry. Corroborating the evidence of PW1, even PW 2 has deposed that on the day, following the day of election, PW 1 happened to meet her (PW 2), while he (PW 1) was proceeding towards the house of the accused, looking for Lalita, and she (PW 2) told PW 1 that the accused had taken away Lalita to his house from the road and that she had heard Lalita screaming. It is also in the evidence of PW 1 that he, then, proceeded towards the house of the accused, but before he could reach the house of the accused, he saw the accused coming and when he (PW 1) asked the accused as to where Lalita was, the accused told PW 1 that leaving the baby, in the house of the accused, Lalita had left for the house of PW 1 to bring back her elder daughter, whom she had left at the house of PW 1, on the previous day. When PW 1 told the accused that Lalita had not come back to his house, the accused told PW 1 that Lalita might have gone to Baithalangsui. As PW 1 suspected some foul play, he took back Lalita's elder daughter to his house and, leaving Lalita's elder daughter at his house, he went to Hojai Police Station and informed them about what had, happened and, then, when, accompanied by police, he (PW 1) came to the house of the accused, the accused, on seeing the policemen coming, started running away, but when the accused was descending to a beel (swam), the members of the public chased him and caught him. PW 1 has deposed that when the police questioned the accused, the accused told them that he had kept Lalita buried near a pond and it is, thereafter, that a formal written information was lodged at the said police station. PW1 has also deposed that police held inquest over the dead body of Lalita and, took away the dead body for post mortem examination.

17. Thus, the evidence on record, as discussed above shows coupled with what we have already indicated above that on the following day of the disappearance of Lalita, when PW1 was proceeding towards the house of the accused, PW 2 informed PW1 as to what had happened on the previous day as regards Lalita and, thereafter, when PW 1 asked the accused, as to where Lalita was the accused, at first, told PW 1 that Lalita had already gone back to the house of PW1 and when PW1 told the-accused that Lalita had not come back to his house, the accused tried to explain the absence of Lalita by saying that Lalita might have gone to Baithalangu. As PW 1 realised that what he (PW 1) had heard from PW 2 was apparently contradictory to what the accused was claiming as regards the whereabouts of Lalita, PW1 became suspicious and went to police station and informed them and, accompanied by police, when PW 1 came back to the house of the accused, the accused, noticing the policemen coming to his house, started running away in order to escape, but he was caught and, upon being questioned, he told the police that he had kept Lalita's dead body buried in the pond within the compound of his house.

18. As far as PW 5 is concerned, his evidence is that on hearing that police had come to apprehend the accused, he went to the house of the accused and, in his presence, the police disinterred Lalita's dead body from the bank of the pond of the accused. In his cross-examination, PW5 has clarified that the accused was apprehended, in his presence, by the police with the help of the members of the public. The defence has not succeeded in eliciting anything from the cross-examination of PW 5 to show that his evidence is unbelievable. We, therefore, see no reason to disbelieve the evidence of PW 5. Thus, the unscathed evidence of PW 5 clearly shows that the accused tried to abscond, but he was apprehended and that Lalita's dead body was disinterred in his (PW 5's) presence.

19. So far as PW6 is concerned, he is VDP President and his house is at a distance of about 2 kilometers from the house-of the accused. The evidence of PW6 is that though he had been informed, on the day of the election, that some women, in the neighbourhood of the accused, had heard Lalita screaming, and though he had been asked to contact police, he did not go to the police station as it had become dark and it was only on the following day that he went to the police

station along with PW 1. What is, however, crucial to note, in the evidence of PW6, is that he has deposed, in tune with the evidence of PW 1, that on seeing the police, the accused started running away and tried to hide in a beel (swamp), but the police apprehended the accused with the help of the members of public and, on being questioned, the accused told the police that he had buried Lalita on the bank of the pond of his house. It is in the evidence of PW 6 that the accused pointed out the place, where he had buried Lalita, and, thereafter, the police recovered the dead body in his presence, in the presence of the members of public and one Executive Magistrate. It is in the evidence of PW 6 that he saw injuries on the head, back and waist of Lalita, police held inquest over the dead body and, thereafter, the dead body was carried away for post mortem examination.

20. The defence failed to elicit anything from the cross-examination of PWs. 5 and 6 to show that what they had deposed were not true. Thus, the unshaken evidence of PW 5 and PW 6, in tune of the evidence of PW 1, show that, on being informed, when police came to the house of the accused, the accused on seeing the policemen started running away and tried to hide in the swamp, but with the help of the members of the public, the police caught hold of the accused and the accused, on being questioned by the police, told them that he had buried Lalita on the bank of the pond, located within the compound of his house, and that Lalita's dead body was, then, disinterred from the bank of the pond of the accused.

21. The fact that the accused had tried to run away on seeing the policemen coming and that the accused had told the police that he had buried Lalita on the bank of the pond and that Lalita's dead body was recovered from the pond and inquest was held over the dead body have emerged unscathed.

22. We may pause, at this stage, to point out that though the accused, according to the evidence on record, told the police that he had killed Lalita and buried her dead body on the bank of the pond of his house, we find that so far as the statement of the accused, that he had killed his wife Lalita, is concerned, the same amounts to confession and since this confession had not led to the discovery of any fact, the confession, so recorded by the learned trial Court, was not admissible

in evidence and, cannot, now, be taken into account. But so far as the statement of the accused, made to the police, that he had buried Lalita's dead body on the bank of the pond of his house, is concerned, the same, as the evidence on record reveals, led to the recovery of the dead body.

23. Thus, the statement, made by the accused that he had buried Lalita's dead body on the bank of the pond of his house, was admissible in evidence under Section 27 of the Evidence Act and can be relied upon. In fact, in a given case, even, when an accused does not make any statement, but points out the place, where a dead-body or incriminating material is, eventually, found buried or concealed, without, of course, his (i.e., the accused) having told the police that it was he (accused), who had concealed it, there can be three possibilities. One possibility is that the accused was the one, who had buried or concealed it. The second possibility is, that the accused had seen someone else burying or concealing it. The third possibility is that the accused had been told by someone, that it was buried or concealed at the place, which the accused has pointed out, if the accused chooses not to tell a criminal Court that his knowledge of the concealment of the dead-body or of the incriminating material was based on the fact that he had seen someone else concealing it or that he had been told by someone that it was concealed there, the criminal Court can presume that it was concealed by the accused himself, for, it is only the accused, who knew or could have offered explanation as to how else he had come to know of such concealment. Consequently, if the accused chooses to refrain from telling the Court as to how else, he came to know of the dead-body or of the incriminating material, the presumption, as indicated hereinbefore, that it is the accused himself, who had concealed the dead body or any other incriminating material, is well-justified. Such interpretation is not inconsistent with the principles embodied in Section 27 of the Evidence Act. See in this regard, *State of Maharashtra v. Suresh* reported in : (2000) 1 SCC 471, wherein the Apex Court, at para 26, dealing with such eventualities, observed and held as under:

26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it.

Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal Court that his knowledge about the concealment was on account of one of the last two possibilities the criminal Court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else, he came to know of such concealment and if he chooses to refrain from telling the Court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal Court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

(Emphasis is supplied)

24. In the light of the position of law, as discussed above, and as laid down in Suresh's case (*supra*), it clearly follows, in the present case, that when the accused had himself told the police, on being questioned, that he (accused) had buried Lalita's dead-body on the bank of his pond, this statement, though amounted to confession, is admissible in evidence inasmuch as the said statement, on being acted upon, led to the recovery of Lalita's dead-body. However, the 'fact discovered', in the context of the facts of the present case, is that it was the accused, who had buried the said dead-body on the bank of the said pond.

25. While considering the above aspect of the case, we may point out that we would have kept excluded from the purview of our consideration, the statement made by the accused that he had buried his wife's dead-body on the bank of the pond, had we found that the said statement was involuntarily made by the accused to the police. Though, no doubt, the said statement was made by the police after the accused stood apprehended by the public, yet the accused, nowhere, alleged, nor is it even, now, alleged, that the said statement was extorted from him under any duress or promise or he was forced or induced to make the said statement. This apart, the accused has not alleged and/or probalised that any force was used, for less physical, to make the accused give the statement, which is

attributed to him.

26. We may also pause here to point out that though a written record of the statement, made by the accused, or the exact words, used by the accused, are not available, the fact remains that there is a overwhelming evidence on record showing that it was the accused, who had given information to the police as to where his wife's dead-body was. Hence, the evidence, given by the witnesses, including the Investigating Officer as regards the information, given by the accused, that he had buried his wife's dead body on the bank of the pond of his house, has been proved at the trial; consequently, the oral evidence, given by the witnesses, as discussed above, is admissible in evidence and can be safely relied upon. (See *Shri Rajiv Phukan and Anr. v. State of Assam* reported in 2009 (2) GLT 414 (FB)). In the light of the statement of the accused, which led to the disinterment of Lalita's dead body, what becomes clear is that the 'fact discovered', in the present case, in the light of the provisions of Section 27 of the Evidence Act, is the fact that it was the accused-appellant, who had buried the said dead body on the bank of the pond of his house. The fact, so discovered, does not, in itself, however, in the absence of anything else, can be taken to have proved that it was none, but the accused, who had killed his wife. The question, therefore, remains as to whether it was the accused, who had killed Lalita?

27. We may, now, turn to the evidence of the Investigating Officer (PW 7). The evidence of the Investigating Officer (PW 7) reveals that on 4-10-1999, at about 9.30 a.m., on receiving a First Information Report (in short, 'F.I.R.') from PW 1, the Officer-in-charge, Hojai Police Station, registered a case and, on being entrusted with the investigation of the case, when-he reached the house of the accused, the accused, on seeing the policemen coming to his house, fled away and hid himself near a beel (swamp); but, with the help of the nearby people, he (Investigating Officer) apprehended the accused and, on being interrogated the accused admitted that he had killed his wife and buried his wife's dead body on the bank of the pond, which was within the compound of the house of the accused. PW 7 has also deposed that the accused showed the place, where his wife's dead body had been buried, the dead body was exhumed, in presence of Executive Magistrate and other people and that the Magistrate held inquest over the said dead body

and, then, the dead body was sent for post mortem examination and, in course of time, he submitted charge-sheet against the accused.

28. Nothing was elicited from the cross-examination of the Investigating Officer (PW 7) to show that his evidence cannot be relied upon. Thus, the evidence of the Investigating Officer (PW 7) remains unshaken.

29. Close on the heels of the evidence of the Investigating Officer PW 7 (Investigating Officer) is the evidence of PW 8 (the doctor), who had conducted the post mortem examination on a dead body, which the prosecution claims to be of Lalita.

30. According to the evidence of the doctor (PW 8), on 15-10-1999, he performed post mortem examination on the dead body of a Hindu female, namely, Lalita Debnath, who was brought to him by the personnel from Hojai Police Station, in connection with Hojai Police Station Case No. 318/99, under Section 302/201, I.P.C. the said dead body having been identified by constable No. 580, namely Hirak Bora.

31. While considering the above evidence of the doctor (PW 8), it needs to be noted that the female dead body, which had been subjected to post mortem examination by PW 8, was not identified by any relative of deceased Lalita.

32. What is, however, of utmost importance to note is that, according to the Investigating Officer, on the basis of the F.I.R. lodged at Hojai Police Station, Case No. 318/99, under Section 302/201, I.P.C. was registered and, on being entrusted with the investigation of the said case, he came to the house of the accused and it was acting upon the statement of the accused, as indicated hereinabove, that the dead body of Lalita was disinterred from the bank of the pond located within the compound of the house of the accused. The fact, that it was Lalita's dead, body, which had been so recovered, had never been in dispute at the trial. The fact, that it was on the said dead body that inquest was held, has also not been in dispute. It is also in the evidence of the Investigating Officer (PW 7) that he sent the said dead body for post mortem examination.

33. What, thus, transpires from the evidence of the Investigating Officer (PW 7) is that it was Lalita's dead body, which was disinterred, and it was on her dead body that inquest was held, and it was her dead body, which had been sent for post mortem examination in connection with Hojai Police Station Case No. 318/99. From the evidence of the doctor (PW 8), what transpires is that it is connection with Hojai Police Station Case No. 318/99 aforementioned that a female dead body was brought to him, for post mortem examination, by a constable of the said police station and it was on this dead body that he had conducted post mortem examination. If the various pieces of evidence, as indicated hereinbefore, are considered together, what in the absence of any denial or dispute raised by the defence, transpires is that Lalita's dead body was sent for post mortem examination, in connection with Hojai Police Station Case No. 318/99, and that it was on the body, which had been so sent in connection with the said case, that PW 8 had conducted post mortem examination. Thus, the post mortem examination was conducted, in our view, on the dead body of Lalita. The fact, that PW 8 had conducted post mortem examination on the dead body of Lalita, was in fact, never questioned by the defence.

34. We may point out that under Section 114 of the Evidence Act, the Court may presume existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Illustration (e) to Section 114 makes it clear that a Court may, in a given case, presume that an official act has been regularly performed. Considering, thus, the provisions for drawing presumption, under Section 114, it becomes clear that, ordinarily, an official act may be presumed by the Court to have been done in the manner, as is normally required to be done. Logically, therefore, unless the Court has some reasons not to draw presumption otherwise, the presumption would inevitably be, in the absence of anything else showing to the contrary, that an official act has been regularly performed. Viewed from this angle, when PW 8 has, even according to the defence, conducted post mortem examination on the dead body, which was sent to him for such post mortem examination, in connection with Hojai Police Station Case No. 318/99, it logically follows that since the police, having held inquest over the dead body of Lalita, sent her dead body, in connection with

Hojai Police Station Case No. 318/99, to the hospital for post mortem examination and, when PW 8 (doctor) has conducted post mortem examination on the dead body, which had been sent to him, in connection with Hojai Police Station Case No. 318/99, the dead body was particularly, when there is nothing to the contrary on record of Lalita Debnath, wife of the accused.

35. Keeping in view what have been discussed above, when we return to the evidence of PW 8, we find that the findings of the doctor (PW 8) were as under:

Thorax--pleura and both the lungs were found congested.

Heart was found healthy and empty.

The dead body was partially decomposed at the time of examination. Injury is found over the Rt. Side : waist and back swelling over the forehead of the left side. Swelling over the frontal region. Collection of blood underneath the injury side. On dissection, injury on the left side of the frontal lobe and the brain is found with Haematoma and Haemorrhage. All the injuries were ante-mortem.

36. The doctor (PW 8) has opined that all the injuries were ante mortem in nature and that the death was due to shock and haemorrhage resulting from the injuries sustained by the said deceased, more particularly, by the head injuries sustained by the deceased. In his cross-examination, PW 8 (doctor) has clarified that the injuries on the head of the deceased proved fatal. The findings of PW 8 (doctor) and his opinion with regard to the cause of death of the person, whose dead body he had subjected to post mortem examination, have not been disputed by the defence. This apart, we do not notice anything inherently incorrect or improbable in the evidence given by the doctor (PW 8) and/or his opinion with regard to the cause of death. What, thus, the evidence of PW 8 discloses is that though the said deceased had sustained several injuries, it was the head injury, resulting into hemorrhage, which caused Lalita's death.

37. Coupled with the above, we notice that the said deceased had sustained injuries on the waist and back and that there was swelling on her forehead and on dissection, the brain was found to have suffered hemorrhage. The undisputed

findings of PW 8 show the said deceased had 'suffered injuries not only on the right side of her waist and back, but also on the left of her forehead. Thus, the injuries were on the right side of the waist and back as well as on the left of the forehead. All these injuries could not have been sustained accidentally inasmuch as these injuries, on two distinct sides of the body (right and left) could not have been caused at the same time. Had Lalita, fallen on left of her forehead, she would not have suffered injuries on the right side of her waist and or on the right side of her back. The injuries, which were found on the waist and the back also exclude every possibility of suicide having been committed by Lalita, for, had the head injury been self-inflicted, there was no reason for her to have suffered injury on her waist and back. The injuries were therefore undoubtedly, homicidal and the injuries on the forehead proved fatal. The conclusion, therefore, which is irresistible to draw, in this regard, is that Lalita's death was homicidal in nature.

38. From the evidence of PW 6, who is an independent witness, what transpires is that he had seen injuries on the waist, back and forehead of the dead body. If the evidence, so given by PW 6, is considered in the light of the evidence of the doctor (PW 8), it becomes transparent that, in tune with the evidence of PW 6, that he had seen injuries on the left of the head, back and waist, the doctor (PW 8) too found injuries on the right side of the waist, on the right side of the back and on the left of the forehead of the dead body, which he had subjected to post mortem examination. Thus, in the light of the injuries, which were found by PW 8 (doctor), there can be no escape from the conclusion that the said dead body was of none other than Lalita and that she died as a result of assault on her person.

39. Thus, the credible incriminating circumstances, which appear against the accused, are as under:

(i) Lalita was the wife of the accused. About 5/5 years before Lalita's death, the accused drove Lalita out by beating her and Lalita had to take shelter at the house of her sister, at Baithalangsua, and started living there with her two children.

(ii) Having driven out, Lalita, as described hereinabove, the accused married again and started living with second wife. However, about 7 days before the day of election, his second wife left for her paternal house and the accused was, on the

day of the election, alone in his house.

(iii) Lalita, along with her two daughters, came on the day, previous to the day of election, and stayed, for the night, at the house of her brother-in-law, namely, PW1, the purpose of her visit to her village being to cast vote.

(iv) Having cast his vote, when PW 1 came back home, Lalita handed over her elder daughter to PW 1 and left with her younger daughter to cast her vote; but, thereafter, Lalita did not come back and was never seen alive by PW 1.

(v) On the day of election, when Lalita and PW 2, having cast their votes, were returning towards the house of PW 2, Lalita stopped on the way and she (Lalita), leaving her younger daughter with PW 2, went to a nearby shop to buy biscuits for her elder daughter, whom she had left at the house of PW 1, while coming to cast vote. The purpose of buying biscuits by Lalita was, obviously, to go back to the house of her brother-in-law with the biscuits for her elder child, whom she had left at her brother-in-law's house.

(vi) Having purchased biscuits, when Lalita came back to the place, on the road, where she had left PW 2 with her (Lalita's) daughter, the accused arrived there and forcibly took Lalita to his house.

(vii) After about half-an-hour of Lalita having been taken away forcibly to his house by the accused, PW 2 met Lalita near the tube-well, which is located in the vicinity of the house of PW 2, and Lalita, at that time told PW 2 that she was apprehending danger to her life, but PW 2 consoled Lalita by telling her that accused would do nothing to her, whereupon Lalita went back to the house of the accused carrying water. To the same effect is the evidence of PW 4 inasmuch as her evidence too is to the effect that she had met Lalita on the day aforementioned near the said tube-well and Lalita told PW 4 that she was scared and wanted to leave the house of the accused, but (PW 4) told Lalita to stay at the house of her husband and that nothing would happen to her.

(viii) After about half-an-hour of Lalita going back to her house, carrying water, PW 2 heard Lalita screaming, 'Oh Mago' (i.e., 'Oh! Mother'), and, thereafter, she,

(PW2) heard nothing. Even PWs 3 and 4, who too are neighbours of the accused, had (heard, while gathering their catties near the house of the accused, a woman screaming, 'Mago' (i.e., Mother) from the direction of the house of the accused and PW 3 noticed Lalita lying on the ground and a short while thereafter, the accused was seen by PW 3 dragging away Lalita into his house. So far as PW 4 is concerned, she too has deposed that, on hearing someone screaming, 'Mago' (i.e., Mother), when she looked towards the direction from which the scream was raised, she saw Lalita being dragged by the accused into his house.

(ix) As Lalita had not returned home on the day of the election, and her daughter kept crying, whole night, looking for her mother (Lalita), PW 1 left his house, at about 7 a.m., on the following day, and, while in search of Lalita, he was proceeding towards the house of the accused, he happened to meet PW 2, who told PW 1 that the accused had dragged Lalita from the road towards his house and, a short while thereafter, she heard Lalita screaming and that, thereafter, she heard nothing. Having been so reported by PW 2, when PW 1 was proceeding further towards the house of the accused, the accused was seen by PW 1 coming and when PW 1 asked the accused as to where Lalita was, the accused told PW 1 that Lalita had left for the house of PW 1 on the very day of election. When PW 1 told the Accused that Lalita had not gone back to PW 1's house, then, the accused told PW 1 that Lalita might have gone to Baithalangsui. Obviously, as Lalita could not have left for Baithalangsui without taking her daughter, whom she had left at the house of PW 1, on the previous day (i.e., on the day of election) and as PW 1 had heard from PW 2 about Lalita being forcibly taken by the accused to his house, PW 1 became suspicious and informed the police. Thereafter, PW 1, accompanied by policemen, came to the house of the accused and, on noticing the policemen coming to his house, the accused started running away, but he was caught. The accused, thus, tried to abscond.

(x) On apprehending the accused, when the police questioned the accused, he told the police that he had buried Lalita's dead body in the bank of the pond, which is located within the compound of his house.

(xi) Thus, though Lalita's dead body was lying within the compound of his house and the accused know where the dead body was lying, he deliberately tried to mislead PW 1 by, first, telling him that Lalita had already gone back to the house of PW 1 and, when PW 1 told the accused that Lalita had not returned to the house of PW 1, the accused falsely told PW 1 that Lalita might have gone back to Baithalangso, where Lalita used to stay with her children. Pointed attention of the accused was drawn by the learned trial Court to this aspect of the evidence of record, which indicated that he had lied to PW 1. When this piece of evidence was put to the accused at the stage of his examination under Section 313(1)(b) of Cr.P.C., he denied to have made the said statement. We, however, in the light of the evidence discussed above, see no reason to disbelieve the fact that the accused did lie to PW 1 as regards the fact as to where Lalita was.

(xii) The fact, therefore, that the accused had tried to bluff away PW 1 is an additional circumstances, which appears against the accused in the chain of incriminating circumstances, which we are now, enumerating.

(xiii) On the basis of the statement given by the accused himself that he had buried the Lalita's dead-body, Lalita's dead body was disinterred from the bank of the pond, which was located within the compound of the house of the accused. Inquest was held on the dead body of Lalita and, then, the dead body was taken away by police for post mortem examination. The witnesses, who had witnessed Lalita's body on being exhumed, noticed injuries on her back, waist and also on her forehead. The post mortem examination also revealed injuries on the right side of Lalita's waist and back and also injury on the left side of her forehead. The injuries were found tallying with the injuries, which the witnesses had noticed, when the dead body had been disinterred. The ante mortem injuries, so found on the said dead body, could not have been caused by a mere fall, or accidentally. The injuries were also not commensurate with the proposition of Lalita having committed suicide. The injuries were, thus, homicidal in nature. It was, however, the injuries-on the head, which had resulted into hemorrhage and caused Lalita's death.

40. The various incriminating circumstances, as catalogued above, make a complete chain of events thereby clearly establishing the fact that the accused-appellant had strained relation with his wife, Lalita, he did not hesitate to beat her, for he beat Lalita and drove her away from his house with her children and married another woman and started living with his second wife. The evidence, on record also disclose that Lalita had to look after her children and that it was to cast vote that she came back to her village; but, as the accused had driven her out, she had to stay with her children at the house of her brother-in-law (PW 1) and, on the day of the occurrence, Lalita, leaving one of her children (the elder one) at her brother-in-law's house and, carrying her younger child, in her arms, went to the polling station to cast her vote and, on returning from the polling station she on the way handed over her younger child to PW 2 and went to buy biscuits from a nearby shop for her elder child, whom she had left at the house of PW 1, indicating that she intended going back to the house of PW 1 but, when she returned with biscuits, the accused arrived there and forced her to go with him to his house. Lalita had reluctantly, gone back to her husband's house, because she apprehended that she might be harmed or, even killed. She, therefore, while coming to fetch water from the tube-well, located near her husband's house, expressed such apprehensions to PW 2 and PW 4. Both these women, however, consoled her and told her that her husband would not harm her. Still apprehensive that something might go wrong, Lalita reluctantly went back to her husband's house. Half-an-hour later, Lalita was heard by PW 2 screaming and, thereafter, nothing further was heard. Even PW 3 heard a woman screaming from the direction of the house of the accused and when she (PW 3) looked towards the house of the accused, she saw Lalita lying on the ground and, shortly thereafter, she saw the accused dragging Lalita into his house. PW 4 too heard a woman screaming from the direction of the house of the accused and, on looking towards the said direction, she too noticed the accused dragging Lalita into his house. On the following day, when PW 1, in search of Lalita, was proceeding toward the house of the accused, he was told by PW 2 as to what had happened on the previous day. With the information, so received from PW 2, when PW 1 proceeded towards the house of the accused, he happened to meet the accused on the way. On being asked by PW 1 as to where Lalita was, the accused tried to bluff PW 1

by saying that Lalita had gone back to the house of PW 1 on the previous day itself; but when PW 1 contradicted the accused by saying that Lalita has not returned to his house, the accused tried to further bluff PW 1 by saying that Lalita might have gone to her sister's house, at Baithalangso (where Lalita used to live with her sister and her two children). Obviously, as PW1 did not believe the accused, he reported the matter to the police. The police accordingly came to the house of the accused. On seeing the policemen coming, the accused tried to run away by hiding in the swamp, but he was apprehended by the nearby people and on being questioned, he admitted that he had killed Lalita and buried the dead body on the bank of his pond.

41. Though the accused is claimed to have admitted before the police that he had killed Lalita, we keep this piece of evidence completely excluded from the purview of our consideration. What cannot, however, be kept excluded is the fact that the accused admitted that he had buried the dead body of Lalita on the bank of his pond and, it was acting upon this statement of the accused that the police recovered Lalita's dead body from the bank of the pond and the witnesses saw mark of injuries on Lalita's waist, back and forehead. The post mortem examination too corroborated that such injuries were, indeed, sustained by Lalita. In fact, that post mortem examination further revealed that the injuries, on the head, had proved fatal inasmuch as it had caused haemorrhage. The multiple ante mortem injuries, which Lalita is found to have suffered, could not have been caused accidentally.

42. Lalita's death was, therefore, neither accidental nor can her death be regarded as suicidal, for, had it been a case of suicide, there would not have been multiple injuries and, that too, on different parts and different sides of her body. The nature of injuries, which Lalita suffered, leave no room for doubt, in our mind, that she had been killed and unless the accused-appellant can be held to have proved his plea of alibi, we will have, we are afraid, no option, but to hold that it was none, but the accused, who had caused Lalita's death.

43. We may, now, turn to the evidence, which the accused has adduced in order to prove his plea of alibi that he was, at the relevant point of time, not present at

his house; rather, he was, at the relevant point of time, at the house of Jogeswar. We must, once again, point out that the accused has adduced evidence by examining himself as DW1 and by examining the said Jogeswar as DW2.

44. While considering the plea of alibi, which the accused has taken, in the present case, in order to show that he was, at the relevant point of time, not at all present at his house, where his wife's dead-body was found, and that he was, at the relevant point of time, at the house of DW2, it needs to be noted that a plea of alibi is based on Section 11 of the Evidence Act, which provides, inter alia, that a fact, which is, otherwise, not relevant, will become relevant if such a fact is inconsistent with the fact in issue. Thus in a given case, when the incident took place at a place, 'X' and the accused claims that he was, at the relevant point of time, at a place, 'Y', in order to show that it was not possible for him (i.e., the accused) to be present at the place, 'X', at the relevant point of time, the implication is that the accused seeks to prove a fact, which is inconsistent with the fact in issue, namely, that the accused was present at the place of occurrence. When a person wants to establish a fact, which will contradict a fact in issue or a relevant fact, such a fact is relevant and must be allowed to be proved. The burden to prove such a fact is, however, on the accused under Section 103 of the Evidence Act inasmuch as Section 103 lays down that the burden of proof, as to any particular fact, lies on that person, who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall be on any particular person.

45. Thus, in the light of Section 103 if the accused wishes the Court to believe in existence of the fact that he was at a place other than the place, where he is alleged to have been, the burden to prove that he (accused) was elsewhere rests on the accused. It is based on this principle that the illustration, appended to Section 103, states, inter alia, that when an accused wishes a Court to believe that, at the time, in question, he was elsewhere, it is the accused, who must prove it. We must hasten to point out and reiterate that the burden of proof of the plea of alibi, which the accused takes, rests on the provisions of Section 103 and not on Section 106.

46. We may also point out that before a Court examines the correctness of the plea of alibi taken by an accused, the evidence on record must, otherwise, be sufficient to bring home the charge against the accused. If the evidence, adduced by the prosecution, is insufficient to uphold the charge brought against the accused, the plea of alibi, taken by the accused, may not be necessary to be examined. When the prosecution succeeds in proving its case, the Court has, if the accused has taken the plea of alibi, obligation to determine whether the plea of alibi is or is not true. Moreover, when the plea of alibi, taken by an accused, is found to be false, it becomes an additional link in the chain of circumstances, which may appear against the accused. In other words, it is only when the prosecution succeeds in discharging its burden of proving its case against an accused that the evidence, given by the accused, as regards his plea of alibi, can be examined in order to ascertain as to whether the accused has been able to exclude the possibility of his presence at the place and time of the alleged occurrence.

47. Coupled with the above, we may point out that when the burden to prove plea of alibi shifts to an accused, the accused must prove his plea of alibi with certainty so as to exclude the possibility of his presence at the place and time of occurrence. If the evidence, adduced by the accused, is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the Court would evaluate the prosecution evidence to see if the evidence, adduced on behalf of the prosecution, leaves any room available to fit therein the defence of alibi. The burden of the accused is, undoubtedly heavy. This flows from the language of Section 103 of the Evidence Act. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt, which would emerge in the mind of the Court.

(Emphasis is added)

48. As to when a Court can examine the plea of alibi and what is the standard of proof of the plea of alibi stands succinctly described in paras 18 and 19 of

Jayantibhai Bhenkaarbhai v. State of Gujarat reported in : (2002) 8 SCC 165 : 2002 Cri LJ 4734 wherein the Apex Court has observed as follows:

18. Section 11 of the Evidence Act, 1872 provides that facts not otherwise relevant are relevant if they are inconsistent with any fact in issue or relevant fact or if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or a relevant fact highly probable or improbable, Illustration (a) of Section 11 reads as under:

Illustrations

(a) The question is whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

19. The plea of alibi flows from Section 11 and is demonstrated by Illustration(a). Sarkar on Evidence (15th Edn., p. 258) states the word 'alibi' is of Latin origin and means 'elsewhere'. It is a convenient term used for the defence taken by an accused that when the occurrence took place he was so far away from the place of occurrence that it is highly improbable that he would have participated in the crime. Alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The burden of proving commission of offence by the accused so as to fasten the liability of guilt on him remains on the prosecution and would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has failed in discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the

accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. An obligation is cast on the Court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence, adduced by the, accused in proving his defence of alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the Court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from Section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable; doubt which would emerge in the mind of the Court.

(Emphasis is added)

49. In the case of Swapan Patra and Ors. v. State of W.B. reported in : (1999) 9 SCC 242, the Apex Court, in no uncertain words, held that an explanation, offered by an accused which is found to be false, is an additional link in the chain of circumstances to complete the chain. The relevant observations, made in this regard, which appear at para 4, read asunder:

4. It is well settled t in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue then the same offers an additional link in the chain of circumstances to complete the chain.lying the aforesaid principle, we have no hesitation to hold that the circumstances established in the case complete the chain of circumstances to prove the charge of murder against the appellant-Swapan Patra and, therefore; the conviction of appellant-Swapan Patra has to be upheld under Section 302, IPC. So far as the

other two appellants are concerned; as stated earlier, in the absence of any positive evidence even about their presence in the house at the relevant point of time, it is difficult to rope them in even if all other circumstances narrated earlier are established and, therefore, they are entitled to an order of acquittal.

(Emphasis is added)

50. Following the decision in Swapan Patra (supra), S.N. Variava, J., Speaking for a 3-Judge Bench, in Kuldeep Singh v. State of Rajasthan reported in : (2000) 5 SCC 7 : 2001 Cri LJ 479, observed and held as under:

18. In the case of Swapan Patra v. State of W.B., it has been held 'that it is a well-settled principle that in a case of circumstantial evidence when the accused offers an explanation and that explanation-is found to be untrue then the same offers an additional link ifVthe chain of circumstances to complete the chain. The same principle is reiterated in the case of State, of Maharashtra v. Suresh. In this case it has been held that a false answer offered by the accused when his attention was drawn to a circumstance renders that circumstance capable of inculcating him. It is held that in a situation like this a-false answer can also be counted as providing 'a missing link' for completing the chain.

(Emphasis is added) Not found in certified copy....Ed.

51. We may, now, pause and look into the evidence, which the defence has adduced. According to the evidence, of the accused (DW1), he had cast his vote, at about 11.00 a.m., had his meals at his house, at about 1-30 p.m., and went to the house of Jogeswar (DW2), at Hojai, and arrived there at about 3.00 p.m. and spent the night at Jogeswar's house, at Hojai, and, on the following day, when he reached home, at about 8/9 a.m., he found the door of his house closed from inside. The accused, then, changed his evidence by saying that on the following day, when he reached his house in the morning, he found the door of his house broken, he did not find articles inside the kitchen, he found PW-3 and PW-4 inside his house and, when he was about to ask them as to what had happened, police came in a vehicle, they apprehended, him and asked him as to where he had burred his wife after killing her. It is in the evidence of the accused (DW-1) that he

told, the police that he had done nothing, but the police beat him up and, showing him a place, on the bank of his pond, asked him to dig that place, and when the accused dug the, place, he found, the dead body of his wife buried there. Whether the plea of alibi, which the accused has taken, is or is not true is a question, which would be dealt with a little later; what, however, becomes clear from the evidence of even the accused is that the, woman, whose dead body was disinterred from the bank of his pond, was the dead body of his wife, Lalita.

52. Taking the, evidence, so given by the accused, as indicated above, when we turn to the evidence of his witness, Jogeswar (DW-2), we find that that the evidence of DW-2 is that he does not know the accused and that he does not know where the accused lives. Thus, while, on the one hand, the accused claims that he was, since the afternoon of the day of election, until the next day morning, remained at the house of DW-2, DW-2, on the other hand, completely belies such assertions, of the accused. In such circumstances, particularly, when we believe the evidence of PW-2, PW-3 and PW-4, we find ourselves bound to hold that the plea of alibi, so taken by the accused-appellant, was wholly false.

53. Thus, there are two distinct occasions, when the appellant, if the evidence of the prosecution is to be believed, has been proved to be lying, namely when PW-1 had asked him, on the following day of the election, as to where Lalita was and, secondly, the explanation offered by the accused as to where he was since the afternoon of the day of the election, until the time his wife's dead body was, admittedly disinterred from the bank of the pond of the accused. When the plea of alibi, is found to be false, it becomes an addition link in the chain of incriminating circumstances against the accused-appellant.

54. To put it a little differently, though the accused claimed-that he was not present at his house since the afternoon of the day of election and, in support of his claim, though he adduced evidence, his evidence was proved to be completely false inasmuch as the accused claimed to have spent the afternoon and the night of the day of election at the house of the DW-2; but DW-2 refused to even recognize the accused. Thus, the accused took the defence of alibi, which was palpably false. It is, therefore, clear that the accused lied twice inasmuch as he, first, feigned

ignorance about Lalita's whereabouts to PW1 and, then, tried to show that he was not even present in his village since the afternoon of the day of election. This defence too was false as indicated hereinbefore. This apart, the accused had been seen even after 4/4.30 p.m. present in his house inasmuch as he was seen dragging Lalita into his house. And thereafter, Lalita was never seen alive and her dead body was disinterred from the bank of the pond, located within compound of the house of the accused.

55. In view of the fact that the accused has not only failed to prove his plea of alibi, but his plea of alibi has been found to be false, it strengthens and reinforces the prosecution's case and drives us to conclude that the evidence adduced by the prosecution provides a complete chain of circumstances against the accused-appellant unerringly pointing out to the accused-appellant as the person, who had killed Lalita Debnath and buried her dead body in order to destroy the evidence of the offence of murder. The chain of events, as discussed above, thus, leaves no room for doubt and, we, in fact, do not entertain any doubt, that it was the accused, who had intentionally caused Lalita's death by assaulting her and causing the injuries on her person as described hereinabove.

56. Situated thus, we affirm the findings of the learned Court below that the accused-appellant had intentionally killed his wife and, thereby, committed offence of murder punishable under Section 302, IPC. The accused not only committed the offence of murder, but also buried the dead body of his wife in order to destroy evidence of the offence of murder, which he had committed. The accused was, therefore, liable for conviction under Section 201, IPC too.

57. Because of the conclusions, which we have arrived at, we fully concur with the findings of guilt reached by the learned trial Court. We, therefore, uphold the conviction of the accused-appellant under Sections 302 and 201 of the Indian Penal Code. As far as the sentences, passed against the accused-appellant, are concerned, we do not find that the sentences, passed against the accused-appellant, are harsh, unreasonable and/or not according to the law. The sentences too, therefore, warrant no interference by this Court.

58. In the result and for the reasons discussed above, this appeal fails and shall accordingly stand dismissed.

59. Send back the LCRs.

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