

(2015) 05 BOM CK 0049
In the Bombay High Court
Case No : Criminal Appeal No. 1035 of 2008

Harish Ramesh Pulekar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(2), 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) ALLMR(Cri) 3133 : (2015) 2 BomCR(Cri) 790

Hon'ble Judges : V.K. Tahilramani, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : Abhay Kumar Apte i/b V.V. Purwant, for the Appellant; A.S. Shitole, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.P. Colabawalla, J.—By this Appeal, preferred by the Appellant - Original Accused - Harish R. Pulekar, exception is taken to the judgment and order dated 27th December, 2007 passed by the I/c Adhoc District Judge-I, Thane in Sessions Case No. 382 of 2006. By the said judgment and order, the learned I/c Adhoc District Judge convicted the Appellant under Section 235(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 302 of IPC and sentenced him to life imprisonment and to pay a fine of Rs. 1,000/-. In default thereof, the Appellant is to suffer a further R.I. for one month.

2. The prosecution case stated briefly, is thus-

(a) The Appellant was married to the deceased - Yogini. Due to their differences and marital disputes, they could not stay together and they had filed for a divorce. During pendency of the divorce petition, on 24th July 2006, the Appellant took the deceased - Yogini to Ami Park Lodge at Ambadi Naka. The Appellant took a room in the said Lodge and paid room charges of Rs. 100/-. The Appellant was also accompanied by his wife, the deceased - Yogini.

(b) At the said Lodge, PW 6 - Vikas Chavan was working as a Manager and maintained a register of the customers who were staying in the rooms at the said Lodge. At the time of taking the room in the said Lodge, the Appellant did not disclose his real name but stated that his name was Sanjay Patil and his wife's name was Samidha Patil and they were residents of Dhamankar Naka Bhiwandi. Accordingly, PW 6 - Vikas Chavan made an entry to the aforesaid effect in the register maintained at the said Lodge and allotted room No. 9 to the Appellant and the deceased - Yogini.

(c) After the Appellant and the deceased - Yogini checked into the said Lodge, at about 2.00 p.m., the deceased - Yogini asked PW 6 - Vikas Chavan for certain articles and accordingly PW 6 - Vikas Chavan gave to the deceased - Yogini a comb, a bucket and water. Thereafter, at around 7.00 p.m., the Appellant asked PW 6 - Vikas Chavan the whereabouts of a medical store, to which he replied that the medical store was at the distance of about 11/2 Kms. Thereafter, at around 9:00 p.m., the Appellant again came to PW 6 - Vikas Chavan and placed his order for a non-vegetarian meal. At that time, PW 6 - Vikas Chavan enquired about the whereabouts of the Appellant's wife to which the Appellant replied that she was ill, and therefore sleeping.

(d) On 24th July 2006, PW 2 - Head Constable Govind Bhangare, and PW 4 - PSI Chandrakant Uttekar, along with Police Constables Vijay Patil and P.C. Baber were on late night Patrolling duty near Ambadi Naka. Late in the night of 24th July 2006, at about 1.00 a.m., (i.e. on 25.07.2006) they saw one person (the Appellant) coming from Shirshat Aambadi Road in a suspicious condition. In view thereof, he was stopped and interrogated and since he could not give any satisfactory answer, he was further interrogated. On further interrogation the Appellant disclosed his correct name and also narrated that he had committed the murder of his wife, as his wife was having illicit relations with a third person. The Appellant was having a room key of Ami Park Lodge and the Appellant led the Police to Ami Park Lodge, where he opened the room with his key. When the Police entered inside the room, they saw one lady found on a bed in a dead condition. The Appellant disclosed that the said lady was his wife. Thereafter, the Appellant was taken to the Police Station and PW 4 - PSI Uttekar lodged a complaint against the Appellant. On the basis of the said complaint, PW 7 - API More, and who was on duty of Station Officer, registered the offence vide C.R. No. I-260/2006. Thereafter, investigation commenced. During investigation, the register maintained by PW 6 - Vikas Chavan at Ami Park Lodge was seized by the Police. The Appellant was arrested on 25th July, 2006 at about 3.30 p.m., and arrest panchnama was prepared (Exh. 23). After completion of investigation, the charge sheet came to be filed and in due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the Appellant under section 302 of IPC. The Appellant pleaded not guilty to the said charge and claimed to be tried. His defence was that of total denial and false implication. After going through the

evidence adduced in this case, the learned I/c Adhoc District Judge convicted and sentenced the Appellant as stated earlier in paragraph 1 above. Hence the present Appeal.

4. We have heard the learned Advocate for the Appellant and the learned APP for the State. After carefully considering the facts and circumstances of the case, hearing the arguments advanced by the learned Advocates for the parties, and minutely perusing the evidence on record and the judgment delivered by the learned I/c Adhoc District Judge, for the reasons mentioned hereinafter, we are of the opinion that the Appellant committed the murder of his wife, the deceased - Yogini, by strangulating her with an electric wire and caused her death.

5. There are no eye witnesses in the present case. The entire case of the prosecution is based on circumstantial evidence. The circumstances against the Appellant are as under:-

- (i) Last seen together theory;
- (ii) Recovery of the dead body of the deceased - Yogini at the instance of the Appellant;
- (iii) Recovery of the electric wire at the instance of the Appellant;
- (iv) Motive.

6. Before we deal with each of the circumstances individually, it would be appropriate to refer to a decision of the Supreme Court in the case of Padala Veera Reddy Vs. State of Andhra Pradesh and others, AIR 1990 SC 79 : (1989) 4 JT 223 : (1989) 2 SCALE 906 : (1989) 2 SCC 706 Supp : (1990) 1 UJ 137 which deals with the tests to be satisfied before a person can be convicted on the basis of circumstantial evidence. The tests as laid down by the Supreme Court are set out in paragraph 10 (of the SCC report) and read thus:

"10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

- "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete

and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir Vs. State of Maharashtra, AIR 1982 SC 1157 : (1982) CriLJ 1243 : (1982) 1 SCALE 388 : (1982) 2 SCC 351 : (1982) 14 UJ 475 "

7. Bearing in mind the above principal of law enunciated by the Supreme Court, we shall now scrupulously and carefully examine the evidence in this case with reference to each of the circumstances against the Appellant set out earlier.

(i) LAST SEEN TOGETHER THEORY:-

8. As far as the first circumstance i.e. "last seen together theory" is concerned, PW 6 - Vikas Chavan has deposed about it. During his deposition, PW 6 - Vikas Chavan has stated that he was working as a Manager at the said Ami Park Lodge. One Kisa Raghoji Raut is the owner of the said Lodge. There are about 10 rooms in the said Lodge and it was started around six years before the incident. PW 6 - Vikas Chavan has deposed that on 24th July 2006, the Appellant and the deceased - Yogini came to the said Lodge for the purposes of taking a room. At that time, PW 6 - Vikas Chavan enquired with the Appellant about his address and also about the lady accompanying him. Accordingly, the Appellant told PW 6 - Vikas Chavan that the lady was his wife and that his name was Sanjay Patil and the name of his wife was Samidha Patil and they were residents of Dhamankar Naka Bhiwandi. Accordingly, he made an entry to that effect in the register and allotted room No. 9 to the Appellant. For the said room, the Appellant paid the room charge of Rs. 100/-. He has deposed that the entry made in the register is in his handwriting and the signature of the Appellant also appears against the said entry. During his deposition, he has identified the said entry and has stated that he was on duty for the entire day on 24th July, 2006. PW 6 - Vikas Chavan has further stated in his deposition that at about 2.00 p.m. on 24th July 2006, the deceased - Yogini had asked him for some articles and accordingly, he had given her a comb, a bucket and water, after which she went towards the room. On the same evening, at around 7.00 p.m., the Appellant came to PW 6 - Vikas Chavan and asked him the location of a medical store to which he replied that it was at the distance of about 11/2 Kms. Thereafter, the Appellant went towards the medical store. PW 6 - Vikas Chavan has further deposed that the Appellant again came to him at about 9.00 p.m., and placed an order for one non-vegetarian meal. At that time, when PW 6 - Vikas Chavan enquired with the Appellant about his wife (the deceased - Yogini), the Appellant replied that since she was ill, she was sleeping. Thereafter, PW 6 - Vikas Chavan took his meal in the said Lodge and went towards his house. On the next day (i.e. 25th July, 2006), while PW 6 - Vikas Chavan was at his residence, at about 6.00 a.m., the Police came there and disclosed to him that a murder was committed in room No. 9 of Ami Park Lodge. Accordingly, he came to Ami Park Lodge with the Police. In room no. 9, he saw a lady who had accompanied the Appellant and who was found dead. The Police took the inspection of the room and drew a spot

panchnama and also seized the register of Ami Park Lodge. PW 6 - Vikas Chavan, during his deposition, has categorically identified the Appellant as the person who checked into room no. 9 on 24th July, 2006 and paid the room charge of Rs. 100/-. He has also identified the deceased - Yogini as being the lady who had accompanied the Appellant and was staying with him in room no. 9.

9. It is clear from the evidence of PW 6 - Vikas Chavan that the Appellant was last seen with the deceased - Yogini shortly before her dead body was discovered by the Police in room no. 9, at the instance of the Appellant. In addition to this, there is the testimony PW 5 - Dr. Avinashkumar H. Nalawade who conducted the post mortem on the dead body of the deceased - Yogini. Whilst conducting the post mortem, on external examination, PW 5 - Dr. Nalawade found the following injuries on the body of the deceased - Yogini:-

"Ligature mark seen below thyroid cartilage encircling the neck completely. Size about 10 1/2" x 1 1/2". On C/s - ecchymosis seen. Parchment like ligament seen"

Accordingly, PW 5 - Dr. Nalawade came to the conclusion that the cause of death was cardio respiratory failure due to strangulation. There is nothing that is elicited in the cross examination of either of these two witnesses to discredit their testimony. We find their testimony to be truthful and reliable. Hence we have no hesitation in relying upon the same.

10. In relation to the "last seen together theory" the Supreme Court in the case of Rohtash Kumar Vs. State of Haryana, (2013) 6 AD 580 : (2013) CriLJ 3183 : (2013) 8 JT 181 : (2013) 3 RCR(Criminal) 355 : (2013) 7 SCALE 472 : (2013) 14 SCC 434 has observed as under:

"Last seen together theory

32. In cases where the accused was last seen with the deceased victim (last seen together theory) just before the incident, it becomes the duty of the accused to explain the circumstances under which the death of the victim occurred. (Vide Nika Ram Vs. State of Himachal Pradesh, AIR 1972 SC 2077 : (1972) CriLJ 1317 : (1972) 2 SCC 80 : (1972) SCC(Cri) 635 : (1973) 1 SCR 428 : (1972) 4 UJ 932 and Ganeshlal Vs. State of Maharashtra, (1992) CriLJ 1545 : (1992) 2 Crimes 161 : (1993) 1 DMC 326 : (1992) 2 JT 592 : (1992) 1 SCALE 811 : (1992) 3 SCC 106 : (1992) 2 SCR 502

33. In Trimukh Maroti Kirkan Vs. State of Maharashtra, (2007) CLT 471 Supp : (2007) CriLJ 20 : (2006) 2 DMC 757 : (2006) 9 JT 50 : (2006) 10 SCALE 190 : (2006) 10 SCC 681 : (2006) 8 SCR 156 Supp : (2006) 148 STC 638 this Court held as under: (SCC p. 694, para 22)

"22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received

injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

(See also Prithipal Singh etc. Vs. State of Punjab and Another etc., (2012) 1 JCC 254 : (2011) 4 RCR(Criminal) 791 : (2011) 12 SCALE 411(1) : (2012) 1 SCC 10 : (2012) 1 UJ 245

34. Thus, the doctrine of "last seen together" shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him."

(emphasis supplied)

11. In another decision of the Supreme Court in the case of Ravirala Laxmaiah Vs. State of A.P., (2013) 6 AD 410 : (2013) CriLJ 3147 : (2013) 8 JT 557 : (2013) 3 RCR(Criminal) 341 : (2013) 7 SCALE 450 : (2013) 9 SCC 283 it has been observed thus:-

"20. It is a settled legal proposition that in a case based on circumstantial evidence, where no eyewitness account is available, the principle is that:

"6. ... when an incriminating circumstance is put to the accused and the said accused either offers no explanation [for the same,] or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete."

[Vide State U.P. Vs. Dr. Ravindra Prakash Mittal, AIR 1992 SC 2045 : (1992) CriLJ 3693 : (1992) 2 Crimes 664 : (1992) 3 JT 114 : (1992) 1 SCALE 937 : (1992) 3 SCC 300 : (1992) 2 SCR 815 , Gulab Chand Vs. State of Madhya Pradesh, AIR 1995 SC 1598 : (1995) 2 Crimes 188 : (1995) 5 JT 373 : (1995) 2 SCALE 623 : (1995) 3 SCC 574 : (1995) 3 SCR 27 : (1995) 2 UJ 201 , State of Tamil Nadu Vs. Rajendran, AIR 1999 SC 3535 : (1999) CriLJ 4552 : (1999) 3 Crimes 179 : (1999) 7 JT 348 : (1999) 6 SCALE 145 : (1999) 8 SCC 679 : (1999) 3 SCR 89 Supp : (1999) AIRSCW 3536 : (1999) 8 Supreme 505 , State of Maharashtra Vs. Suresh, (1999) 9 JT 513 : (1999) 7 SCALE 386 : (2000) 1 SCC 471 : (1999) 5 SCR 215 Supp : (2000) 1 UJ 326 and Ganesh Lal Vs. State of Rajasthan, (2002) CriLJ 967 : (2001) 9 JT 383 : (2001) 7 SCALE 551 : (2002) 1 SCC 731 : (2001) AIRSCW 5251 : (2001) 8 Supreme 317 .

21. In Neel Kumar @ Anil Kumar Vs. The State of Haryana, (2012) 2 RCR(Criminal) 941 : (2012) 5 SCALE 185 : (2012) 5 SCC 766 : (2012) AIRSCW 3766 this Court observed: (SCC p. 774, para 30)

"30. It is the duty of the accused to explain the incriminating circumstance proved against him while making a statement under Section 313 Cr.P.C. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him. Recovery of incriminating material at his disclosure statement duly proved is a very positive

circumstance against him. (See also Aftab Ahmad Anasari Vs. State of Uttaranchal, AIR 2010 SC 773 : (2010) CLT 499 : (2010) 1 Crimes 97 : (2010) 1 JT 424 : (2010) 1 SCALE 408 : (2010) 2 SCC 583 : (2010) 1 SCR 1027 "

22. In cases where the accused has been seen with the deceased victim (last seen theory), it becomes the duty of the accused to explain the circumstances under which the death of the victim has occurred. (Vide Nika Ram Vs. State of Himachal Pradesh, AIR 1972 SC 2077 : (1972) CriLJ 1317 : (1972) 2 SCC 80 : (1972) SCC(Cri) 635 : (1973) 1 SCR 428 : (1972) 4 UJ 932 , Ganeshlal Vs. State of Maharashtra, (1992) CriLJ 1545 : (1992) 2 Crimes 161 : (1993) 1 DMC 326 : (1992) 2 JT 592 : (1992) 1 SCALE 811 : (1992) 3 SCC 106 : (1992) 2 SCR 502 and Ponusamy Vs. State of Tamil Nadu, AIR 2008 SC 2110 : (2008) CriLJ 2563 : (2008) 5 JT 316 : (2008) 6 SCALE 198 : (2008) 5 SCC 587 : (2008) AIRSCW 3184 : (2011) AIRSCW 5748

23. In Trimukh Maroti Kirkan Vs. State of Maharashtra, (2007) CLT 471 Supp : (2007) CriLJ 20 : (2006) 2 DMC 757 : (2006) 9 JT 50 : (2006) 10 SCALE 190 : (2006) 10 SCC 681 : (2006) 8 SCR 156 Supp : (2006) 148 STC 638

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

(See also Prithipal Singh etc. Vs. State of Punjab and Another etc., (2012) 1 JCC 254 : (2011) 4 RCR(Criminal) 791 : (2011) 12 SCALE 411(1) : (2012) 1 SCC 10 : (2012) 1 UJ 245 "

(emphasis supplied)

12. In the evidence of PW 6 - Vikas Chavan it is clearly brought out by the prosecution that the Appellant was last seen with the deceased - Yogini. The evidence of PW 5 - Dr. Nalawade further sets out the injuries on the body of the deceased - Yogini and states that the cause of death was cardio respiratory failure due to strangulation. Since the Appellant was last seen with deceased - Yogini shortly before her dead body was discovered, it was the duty of the Appellant to explain the injuries found on the dead body of the deceased - Yogini. If the Appellant does not offer any explanation how the deceased - Yogini received the injuries, and which was the cause of her death, it is a strong circumstance which indicates that he is responsible for commission of the crime.

13. In the facts of the present case we find that the Appellant has not offered any explanation whatsoever for the injuries found on the dead body of the deceased - Yogini, and which, according to the testimony of PW 5 - Dr. Nalawade, caused her death. In fact, this non-explanation by the Appellant would itself be

an additional link in the chain of circumstances to sustain the charge against him. Thus, in view of the evidence of PW 6 - Vikas Chavan coupled with the fact that the Appellant has not offered any explanation about the circumstances under which the death of his wife (the deceased - Yogini) occurred, we are clearly of the view the prosecution has proved this circumstance (i.e. the "last seen together theory") against the Appellant beyond reasonable doubt.

(ii) RECOVERY OF THE DEAD BODY OF THE DECEASED - YOGINI AT THE INSTANCE OF THE APPELLANT:-

14. The next circumstance against the Appellant is the recovery of the dead body of the deceased - Yogini at the instance of the Appellant. With reference to this circumstance, PW 2 - Head Constable Govind Bhangare and PW 4 - PSI Uttekar have deposed about the same. PW 2 - HC Bhangare has deposed that he was a Head Constable at Ganeshpuri Police Station since the last four years before the incident. On 24th July 2006, he was on night patrolling duty near Aambadi Naka along with his other colleagues namely PW 4 - PSI Uttekar, Police Constable Vijay Pail and Police Constable P.C. Baber. During their Patrolling duty, they saw one person coming towards Aambadi Naka at around 1.00 a.m. (i.e. on 25.07.2006) and the said person was found suspicious, and therefore, interrogated. That person disclosed his name as Harish Ramesh Pulekar (the Appellant). PW 2 - HC Bhangare identified the Appellant in Court as the same person whom they had stopped and interrogated at 1.00 a.m. on 24th July, 2006. In his deposition, PW 2 - HC Bhangare further stated that during interrogation, the Appellant disclosed that he committed the murder of his wife at Ami Park Lodge. Accordingly, PW 2 - HC Bhangare, PW 4 - PSI Uttekar, Police Constable Vijay Patil and Police Constable P.C. Baber, along with the Appellant, went to Ami Park Lodge. The Appellant showed the way. The key of the said room was with the Appellant, with which he opened the room. Once the room was opened, PW 2 - HC Bhangare saw one lady lying on the cot and was found dead. He saw a mark of a wire on the neck of the lady.

15. Similarly, PW 4 - PSI Uttekar has deposed that since the last two years, he has been serving as a PSI at Ganesh Puri Police Station. On 24th July 2006, he was on night duty at Aambadi Nakabandi along with the other police staff. During the said night duty, he along with the other Police officials saw one suspicious looking person coming from Shirshat Aambadi Road. Therefore, they stopped him and interrogated him. Since he could not give any satisfactory answer, they conducted further interrogation, during which the Appellant disclosed his correct name (Harish Ramesh Pulekar) and also narrated that he had committed the murder of his wife as she was having illicit relations with someone else. The Appellant further disclosed that he was having a key of a room of Ami Park Lodge. Therefore, PW 4 - PSI Uttekar and other police officials (including PW 2 - HC Bhangare) went towards Ami Park Lodge where the Appellant opened the lock on the room with his key. When they entered room, they saw that one lady was found on the bed in a dead condition and the Appellant disclosed that the said

lady was his wife (the deceased - Yogini). Thereafter, they took survey of the room and also the survey of the dead body of the deceased - Yogini, and found that she was having marks on her neck. Thereafter, they took the Appellant to the Police Station, where PW 4 - PSI Uttekar lodged a complaint against the Appellant (Exh. 28). On the basis of this complaint, PW 7 - API Ramakant More, and who was on duty of station officer, registered the offence vide C.R. No. I-60/2006.

16. On, perusing the evidence of PW 2 - HC Bhangare as well as PW 4 - PSI Uttekar, it is clear that the dead body of the deceased - Yogini was recovered at the instance of the Appellant. This is a highly incriminating circumstance against the Appellant which has not been explained by him in his statement under Section 313 of the Code of Criminal Procedure. Further, there is nothing that is elicited in the cross examination of these two witnesses to discredit their testimony. We find their testimony to be truthful and reliable. Hence we have no hesitation in relying upon the same.

17. Mr. Apte, the learned counsel appearing for the Appellant, pointed out that there were omissions in the evidence of PW 2 - HC Bhangare and PW 4 - PSI Uttekar which made their testimony unreliable and not free from doubt. He submitted that the fact that the Appellant opened the room (in which the dead body of the deceased -Yogini was found), as deposed by PW 2 - HC Bhangare and PW 4 - PSI Uttekar is an omission as admitted by them in their respective cross examinations. He, therefore, submitted that the depositions of PW 2 - HC Bhangare and PW 4 - PSI Uttekar are highly untrustworthy and ought not to be relied upon by us.

18. We cannot agree with the aforesaid submission. It is true that in the evidence of PW 2 - HC Bhangare there is an omission regarding the fact that the Appellant had opened the room. In cross examination, PW 2 - HC Bhangare has stated that he had mentioned this fact to the Police, but it does not find place in his statement. Therefore, clearly there was an omission. However, we do not find that this omission is in any way fatal to the case of the prosecution. It is hardly relevant whether the room was opened by the Appellant, or whether the key was taken from the Appellant and thereafter the room was opened by the Police. The fact of the matter is that the key of the room, in which the deceased - Yogini was found dead, was in the possession of the Appellant. This fact has been categorically brought out in the evidence of PW 2 - HC Bhangare and there is nothing in the cross examination to contradict this fact. We, therefore, think that the omission pointed out by Mr. Apte, can be of no assistance to the Appellant. Similarly, even in the deposition of PW 4 - PSI Uttekar, there is an omission regarding the fact that the Appellant had opened the room. This has been brought out by the defence in the cross examination. However, PW 4 - PSI Uttekar, in his deposition, has categorically stated that the Appellant was having a key of the room of Ami Park Lodge. It is further stated that with the said key, lock of the room was opened and inside the said room, they found dead body of

the deceased - Yogini and the Appellant disclosed that the said deceased - Yogini was his wife. These facts are admittedly not omissions. There is nothing in the cross examination that has been brought out to contradict these facts. We, therefore, find that the said omission in the evidence of PW 4 - PSI Uttkar regarding the fact that the accused opened the room would not be fatal to the case of the prosecution. As stated earlier, the fact of the matter is that the key to the said room was in the possession of the Appellant and with which key the room was opened, in which the dead body of the deceased - Yogini was found. We are, therefore, clearly of the view that the second circumstance (i.e. the recovery of the dead body of the deceased - Yogini at the instance of the Appellant), is duly proved by the prosecution against the Appellant beyond reasonable doubt.

(iii) THE RECOVERY OF THE ELECTRIC WIRE (ARTICLE 19) AT THE INSTANCE OF THE APPELLANT:-

19. The third circumstance against the Appellant is the recovery of the electric wire (Article 19) at the instance of the Appellant. With regard to this circumstance, the evidence of PW 3 - Pandhari Benke as well as the evidence of PW 7 - API More is relevant. PW 3 - Benke, who is the panch witness, has deposed that on 25th July, 2006 he was called at Ganesh Puri Police Station to act as a panch. Another panch was also present at that time. The Appellant was arrested in presence of the panch PW 3 - Benke, and arrest panchnama (Exh. 23) was accordingly prepared. He has deposed that he has signed the said arrest panchnama and the contents are correct. He has further identified the Appellant as the person who was arrested in his presence on 25th July, 2006. PW 3 - Benke has further stated that thereafter, the Police again called him at Ganesh Puri Police Station on 28th July, 2006. At that time also another panch was present. At that time, the Appellant made a statement (Exh. 24) that he was willing to point out the place where he had thrown the electric wire with which he had strangled his wife (the deceased - Yogini). As per the aforesaid statement, the Police, the Appellant and the panchas (including PW 3 - Benke) started from Ganesh Puri Police Station by Police Jeep bearing No. MH 04/AN/309 and as per the directions given by the Appellant, the said jeep proceeded and thereafter stopped near Ami Park Lodge. Thereafter, the Appellant took the Police and Panchas to the back side of room no. 9 (the room in which the dead body of the deceased - Yogini was found) of Ami Park Lodge. There the Appellant traced one piece of electric wire from the grass and shrubs and produced it to the Police before the Panchas. The aforesaid electric wire (Article 19) was produced by the Appellant to the Police before the Panchas and the same was seized by the Police for investigation. The aforesaid recovery has been duly recorded in the panchnama dated 28th July, 2006 (Exh. 24/A) and which is on record. PW 3 - Benke has deposed that the contents of Exh. 24 and 24/A were recorded in his presence. It bears his signature and that they are correct.

20. PW 3 - Benke has also deposed that on 28th July 2006, another piece of

electric wire (Article 20-a) was seized by the Police from the house of the Appellant. A Panchanama to that effect was also drawn (Exh. 25). PW 3 - Benke has further deposed that the contents of the said panchnama are correct and that it bears his signature as well as the signature of the Appellant. There has been nothing elicited in the cross examination of PW 3 - Benke to discredit his testimony.

21. Similarly, on the aspect of recovery of the electric wire (Article 19), in his deposition, PW 7 - API More has stated that on 28th July, 2006 the Appellant was willing to make a statement and therefore he called the panchas. In the presence of the panchas (including PW 3 - Benke), the Appellant made a statement that he is willing to show a place where he kept the electric wire. To that effect, PW 7 - API More recorded his statement (Exh. 24). PW 7 - API More has stated in his deposition that thereafter, the Appellant took them to Ami Park Lodge and shown a place outside the window of room no. 9, from where he produced one electric wire (Article 19). Accordingly, it was seized by PW-7 API More in the presence of the Panchas and he prepared a recovery panchnama to that effect (Exh. 24/A). PW 7 - API More has deposed that the said panchnamas (Exh. 24 and 24/A) bear his signature and the signature of the panchas. PW 7 - API More, during his deposition, has further identified the electric wire (Article 19) as the same electric wire that was recovered at the instance of the Appellant under the panchnamas (Exh. 24 and Exh. 24/A). In addition thereto, PW 7 - API More has further stated that on the same day, as per the statement of the Appellant, one piece of electric wire which was similar to the electric wire recovered at the instance of the Appellant under panchnama - Exh. 24/A, was seized from the house of the Appellant in the presence of the panchas and accordingly, the seizure panchnama was prepared (Exh. 25). The electric wire seized from the house of the Appellant has also been identified by PW 7 - API More during his deposition. There is nothing elicited in the cross examination of PW 7 - API More to discredit his testimony.

22. On carefully going through the testimony of PW 3 - Benke (panch witness) as well as PW 7 - API More, it is clear that the electric wire (Article 19) was recovered at the instance of the Appellant from a place outside the window of room no. 9. A similar electric wire (Article 20-a) was also seized from the house of the Appellant. We have personally examined both the electric wires (i.e. Article 19 and Article 20-a). They are of the same colour (Red) and thickness which is also evidenced from the panchnamas (Exh. 24/A and Exh. 25). The only difference is that, the length of the wire - Article 19 is mentioned as 40" whereas the length of the wire - Article 20-a, and which was seized from the house of the Appellant, is 45". Otherwise, the two wires appear to be identical. On carefully examining the testimony of PW 3 - Benke as well as PW 7 - API More we find their evidence to be truthful, consistent and reliable. We therefore have no hesitation in relying upon the same. The recovery of the electric wire (Article 19) from the back side of room no. 9 of Ami Park Lodge (in which room the dead body of the deceased - Yogini was found), being almost identical to the wire

(Article 20-a) being seized from the house of the Appellant, is a very strong circumstance against the Appellant which has not been explained by him in his statement under Section 313 of the Code of Criminal Procedure, 1973. We therefore have no hesitation in holding that this circumstance (i.e. the recovery of the electric wire (Article 19) at the instance of the Appellant) has been duly proved by the prosecution beyond reasonable doubt.

23. The last circumstance against the Appellant is "motive". As far as motive is concerned, it is an admitted fact that the relations between the Appellant and the deceased - Yogini (his wife) were strained and in fact a Divorce Petition between two was pending in Court. PW 7 - API More, in his cross examination, has deposed that on questioning the parents of the deceased - Yogini, he came to know that there was a matrimonial dispute going on between the Appellant and the deceased - Yogini in Court and they produced documents to that effect which were placed on record. It has also come on record that the Appellant use to suspect his wife, the deceased - Yogini for having illicit relations with some third person. The fact that there was a matrimonial dispute going on between the Appellant and the deceased - Yogini and which fact has fairly not been disputed by Mr. Apte, coupled with the fact that the Appellant use to suspect his wife (deceased Yogini) of having illicit relations with some third person, we are clearly of the view that motive has been established against the Appellant. Therefore this circumstance is also duly proved by the prosecution beyond reasonable doubt.

24. We must also make note of the evidence of PW 5 - Dr. Nalawade, the medical officer who conducted the post mortem on the dead body of the deceased - Yogini. PW 5 - Dr. Nalawade has deposed that on 25th July, 2006 the dead body of the deceased - Yogini was brought for post mortem to I.G.M. hospital, Bhiwandi, where he was a Medical Officer. During the post mortem, PW 5 - Dr. Nalawade observed the following external injuries:-

"Ligature mark seen below thyroid cartilage encircling the neck completely. Size about 10 1/2" x 1 1/2". On C/s - ecchymosis seen. Parchment like ligament seen"

25. PW 5 - Dr. Nalawade has stated that on the basis of the examination of the dead body, in his opinion, the cause of death was due to cardiorespiratory failure due to strangulation. On being shown the electric wire (Article 20-a) PW 5 - Dr. Nalawade has deposed that strangulation is possible with the electric wire (Article 20-a).

26. After carefully and scrupulously examining the evidence in this case, we are of the view that the circumstances set out earlier, and from which an inference of guilt of the Appellant is sought to be drawn, are cogently and firmly established by the prosecution. These circumstances unerringly point towards guilt of the accused and when taken cumulatively, form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Appellant.

27. For all the aforesaid reasons, we find no merit in the Appeal and the same is hereby dismissed.