
(2012) 08 DEL CK 0160
In the Delhi High Court
Case No : Criminal A. 11 of 2012

Kaushal Singh

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 428
Evidence Act, 1872 — Section 106, 8
Penal Code, 1860 (IPC) — Section 201, 302, 304B, 34, 498A

Citation : (2012) 194 DLT 342

Hon'ble Judges : Sanjiv Khanna, J; S.P. Garg, J

Bench : Division Bench

Advocate : Deepak Vohra, for the Appellant; Richa Kapoor, APP for the State, for the Respondent

Judgement

S.P. Garg, J.—The present appeal is directed against the judgment dated 19.07.2011 and order on sentence dated 18.08.2011 of learned Additional Sessions Judge in Sessions Case No.1110/08 by which the appellant was convicted for committing offences punishable u/s 302/201 IPC and sentenced to undergo imprisonment for life with fine of Rs. 10,000/- u/s 302 IPC and rigorous imprisonment for four years with fine of Rs. 2,000/- for committing offence punishable u/s 201 IPC. Both the sentences were to operate concurrently. Briefly, the facts of the prosecution case are as under. The police machinery came into motion on 27.09.2005 at about 6:30 P.M. when DD No.14 (Ex. PW-17/A) was recorded at PS Nangloi on getting information about a headless body of a lady lying at Nizampur near Phatak Nangloi, Tikri. The investigation was assigned to SI Sita Ram who with Constable Kamal reached the spot and found headless body of a lady in the bushes. Due to darkness, the other body-parts could not be traced. He made endorsement on DD No.14 (Ex. PW17/A) and sent the rukka for lodging First Information Report (FIR). He summoned the crime team and dog squad. The inquest proceedings were conducted. On 28.09.2005, legs and face of the deceased were found. Necessary proceedings were conducted on the spot.

Public notice for identification of the dead body was issued. Dr. Manoj Dhingra (PW-16) conducted post-mortem examination of the body and thereafter it was cremated. Kamlesh Yadav (PW-10), landlord of the accused identified the photo of the body to be that of Baby Devi-accused's (Kaushal) wife. The police set out to interrogate Kaushal but he was absconding.

2. SI Sita Ram visited native village of the accused but he could not be traced. He also visited the parents' house of the deceased in village Paharpur, District Nawada, Bihar and they identified the photo to be that of their daughter Baby Devi. During inquiry, SI Sita Ram came to know that they had lodged a case against the accused and his family members for the murder of their daughter. He collected the photocopy of the complaint.

3. On 20.12.2005 the accused surrendered in the court and was arrested. He was interrogated and pursuant to disclosure statement, he pointed out the place where he had kept his wife in the tenanted room of Santosh. The room was found locked. After breaking the lock, one bag containing ladies clothes was recovered. The accused, thereafter, led the police near the bushes, railway line and got recovered the weapon of offence i.e. "Dav". The IO prepared its sketch and seized it vide seizure memo (Ex. PW-4/B). On 26.12.2005, the co-accused Jitender was arrested and interrogated. He pointed out the place where they had dismembered the body. Efforts were made to arrest the co-accused Navin @ Chote and Pappu but they remained untraced and were declared proclaimed offenders. The investigating officer recorded statements of the witnesses conversant with the facts. Exhibits were sent to Forensic Science Laboratory for examination. From the statements of the parents and brother of the deceased recorded u/s 161 Cr.P.C., it emerged that the accused was married to Baby and she had resided in the matrimonial home for about one year. When the accused began maltreating her on account of dowry demands, she left the matrimonial home and started living with her parents. Subsequently the accused shifted to Delhi and after some reconciliation, he and his brother-in-law Suraj brought her to Delhi. Soon thereafter, her dismembered body was found in Delhi.

4. After the investigation was over, the police filed a charge-sheet against Kaushal Singh, Jitender Singh (since acquitted), Navin @ Chote and Pappu (since proclaimed offenders) for committing offences punishable under Sections 302/201/34 IPC. They were duly charged and brought to trial.

5. At the trial, the prosecution examined twenty-four witnesses to substantiate the charges against the accused. The statements of the accused were recorded u/s 313 Cr.P.C. in which they denied their involvement. The accused Kaushal Singh took the plea that he was not married to Baby Devi and she was never brought to Delhi. He further stated that since July, 2005, he was working as labourer in Punjab. The body recovered at Delhi was not that of Baby Devi and her parents wrongly claimed it to be the body of Baby Devi to falsely implicate him in this case. The accused, however, did not prefer to produce evidence in defence.

6. After appreciating the evidence and considering the rival contentions of the parties, the appellant was convicted for the commission of offences punishable u/s 302/201 IPC and the accused Jitender Singh was acquitted of all the charges. Aggrieved by the said orders, the appellant has preferred the appeal.

7. The counsel for the appellant challenged the findings of the trial court and urged that it did not appreciate the evidence in its true and proper perspective and relied upon the testimonies of PWs 2, 3 and 18 who were close family members of the deceased and were interested witnesses. He further contended that the prosecution did not produce any cogent evidence to establish relationship of husband and wife between them. He further urged that Baby Devi was married to Mantu Kumar and due to strained relations with him, she started residing with the accused since 23.04.1995. She was never brought to Delhi. The body recovered at Delhi was not that of Baby Devi. The recovery of weapon of offence is highly doubtful as the witnesses have given inconsistent version and it is full of discrepancies. The weapon of offence was not shown to the autopsy doctor and his opinion has not been proved on record. PW-10 (Kamlesh Yadav) and PW-23 (Santosh Kumar) have not supported the prosecution and turned hostile. The learned trial court, urged the counsel, based its conviction on hearsay evidence. The material witnesses have made vital improvements in their depositions before the court.

8. On the other hand, learned APP supported the judgment and argued that it does not call for any interference. The parents and brother of the deceased categorically proved the marriage of the accused with the deceased and their statements have remained unchallenged. The accused and his Jija had brought the innocent lady to Delhi with the sole motive to eliminate her. Soon after she was brought to Delhi, the accused with the assistance of his associates chopped her and threw her body parts in the bushes. The deceased's parents lodged complaint for her murder on 30.09.2005 in District Nawada after getting information of her death from Delhi. They identified her photo. The accused did not produce any evidence to substantiate his false defence.

9. We have considered the submissions of the parties and have examined the trial court record. At the outset, it may be mentioned that the entire case of the prosecution is based upon circumstantial evidence. The circumstances relied upon by the prosecution to prove the charges are discussed as under:

(A) Marriage with the deceased

10. Case of the prosecution from the inception is that Baby Devi was married to the accused. The accused denied existence of valid marriage with the deceased.

11. PW-2 (Ramudit Kumar), deceased's brother categorically deposed that the victim was married to the accused as per Hindu rites and rituals and after the marriage, she resided in her matrimonial home at village Dhanama (Bihar). After one year of the marriage, when the accused began harassing her on account of dowry demands, she left the matrimonial home and started living with him. He

elaborated that earlier, Baby Devi was married to one Mantu Kumar. However, after his death in an accident, he solemnized her marriage with the accused Kaushal Singh. In the cross-examination, he admitted the suggestion that the accused Kaushal Singh used to visit his house, frequently and they used to pay usual respect to him.

12. The deposition of this witness reveals that material facts regarding relationship of husband and wife between the deceased and accused deposed by him remained unchallenged in the cross-examination. No suggestion denying the marriage was put to him. The accused did not deny deceased's stay in the matrimonial home for about one year after the marriage. This close relative of the deceased has no ulterior motive to falsely claim the accused to be the husband of her deceased sister.

13. PW-3 (Madan Singh), deceased's father, aged about 60 years travelled from village Paharpur, Distt. Nawada, Bihar to appear in the Court and testified that after the death of Baby's previous husband, his son solemnized her marriage with the accused Kaushal Singh according to Hindu rites and rituals. She started living in the matrimonial home at village Dhanama (Bihar). In the cross-examination, he fairly admitted that he did not remember the date of marriage and was having no photo or wedding card. He denied the suggestion that the deceased was never harassed on account of dowry demands. Again the accused did not deny his marriage with the deceased and his assertion about the marriage remained uncontroverted.

14. PW-18 (Smt.Ahilya), deceased's mother revealed on oath about the marriage of her daughter Baby to the accused Kaushal Singh performed after the death of her previous husband Mantu in an accident. She further disclosed that her marriage took place about two years prior to the incident. The accused did not challenge his marriage with the deceased in the cross-examination.

15. In the absence of any inconsistency in the statements of PW-2, PW-3 and PW-18, it stands established that the deceased Baby Devi was married to the accused and she had stayed at the matrimonial home. Due to strained relations, the deceased started residing at village Paharpur (Bihar) where the accused used to visit her.

16. On 01.12.2009, for the first time, the accused denied existence of marriage in the cross-examination of PW-11 (SI Sita Ram). In the cross-examination of ACP Harpal Singh, the accused denied Baby Devi's death and suggested that body recovered was wrongly identified by her family members to be that of Baby. He put suggestion to PW-22 (ACP Harpal Singh) that Baby Devi had not died and the body recovered was not that of Baby and it was wrongly identified by her parents for ulterior motive.

17. In the statement u/s 313 Cr.P.C., the accused categorically took the plea that no valid marriage existed with the deceased as she was already married to one Mantu Kumar. He further pleaded that Baby left the matrimonial home of her own

free will and started living with him since 23.04.2005 due to her strained relation with Mantu Kumar. No marriage took place between him and Baby Devi as she was having a living spouse.

18. The burden to establish these facts and to rebut the positive testimonies of PW-2, PW-3 and PW-18 was heavily upon the accused. However, he did not examine any witness to prove the defence taken by him for the first time in the statement u/s 313 Cr.P.C. He did not examine his close family members to substantiate his defence. In the absence of any material on record, the defence pleaded by the accused, cannot be taken as a gospel truth. The accused never confronted the close family members of the deceased and denied his marriage with the deceased. They were not put any suggestion that Baby was alive or that her previous husband Mantu Kumar had not expired in any accident. The accused did not elaborate at which place, Baby had started living with him since 23.04.1995. He also did not clarify till which date they both lived together. He did not come up with any plea as to when and where he parted company with her.

19. We have no reasons whatsoever to disbelieve the cogent testimonies of the close relatives of the deceased who in clear terms claimed the relationship of husband and wife between the deceased and the accused. They identified the photo of the body/ face to be that of Baby Devi who was no more alive. They had no ulterior purpose to falsely identify the photo of a stranger. Being close relatives, they were material witnesses to identify her photo correctly.

(B) Last seen

20. Baby Devi earlier used to reside in the matrimonial home. When the relations became strained due to alleged harassment on account of dowry demands, she started living at village Paharpur (Bihar). The accused used to visit her and as per the testimony of PW-2 (Ramudit Kumar), he had started living with her. The accused also admitted in the statement recorded u/s 313 Cr.P.C. that he used to live with the deceased albeit without marriage since 23.04.1995. He however, omitted to disclose the place where both of them resided.

21. Case of the prosecution is that the accused and his brother-in-law (jija) visited the parents of the deceased and requested them to send the victim with them to Delhi where the accused had shifted. PW-2 (Ramudit Kumar) testified that the accused who had shifted to Delhi took his sister to Delhi after some reconciliation. On 25.09.2005, the accused accompanied with his jija (Subodh Kumar) went to the village and they both took his sister to Delhi. In the cross-examination, the witness was confronted with his statement (mark PW-2/DA) recorded u/s 161 Cr.P.C. where he had not stated this fact. He denied the suggestion that accused had not brought his sister to Delhi.

22. Overall testimony of this witness reveals that material facts regarding the accused and his brother-in-law (Subodh Kumar) bringing Baby to Delhi have remained uncontroverted. No suggestion was put to him that accused and his jija had not visited the village to bring Baby Devi to Delhi. The accused did not

suggest any specific place where he was residing with Baby since 23.04.1995.

23. Testimony of PW-2 has been corroborated by PW-3 (Madan Singh), deceased's father and PW-18 (Smt. Ahilya), her mother who also deposed that the accused brought their daughter to Delhi. No suggestion was put to them that the accused had not brought the deceased to Delhi. Their version remained unchallenged.

24. The prosecution version on this aspect has been strengthened by the fact that the body of the deceased was found in Delhi. On 27.09.2005, DD No.14 (Ex. PW-17/A) was recorded at 06.35 P.M. when dismembered and beheaded corpse was noticed in the bushes at Nizampur near Railway Phatak, Nangloi. Due to darkness, other body parts could not be found that day. PW-11 (SI Sita Ram) made endorsement (Ex. PW11/A) and lodged First Information Report. On the next morning, legs and face of the deceased were recovered from the bushes. The deceased had no purpose to visit Delhi alone. The recovery of dead body of the deceased at Delhi in the vicinity of residence of the accused confirms that the accused brought her from Bihar to Delhi. The accused did not offer any reason for her visit to Delhi. It was not explained as to where she stayed prior to her horrible death.

25. Since the accused had brought the deceased (his wife) to Delhi after some reconciliation and she was last seen alive with the accused, the burden to prove her disappearance was upon the accused. The accused was having special knowledge as to where and under what circumstances, he parted company with the deceased. The accused did not divulge the information which was in his special knowledge. The accused did not examine his brother-in-law (Subodh Kumar) in defence to demolish the prosecution case that they had not visited the residence of the deceased and had not brought her to Delhi. The prosecution has established that the deceased was last seen alive with the accused by her parents and brother when he brought her from Bihar to Delhi.

26. In the case of State of Rajasthan Vs. Kashi Ram, , the Supreme Court held as under:

22. In Sahadevan vs. State the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of 5-3-1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of 6-3-1985. In the background of such facts the Court observed :

Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement u/s 313 Cr.P.C. they have not taken any specific stand whatsoever.

23. It is not necessary to multiply with authorities. The principle is well settled. The provision of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. He must furnish an explanation which appears to court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are especially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain.....

27. In the present case the accused had brought the deceased from her parents' house to Delhi and she was seen in his company at the time of his departure from Bihar to Delhi. Soon thereafter she was found murdered in Delhi. The accused was obliged to furnish some explanation as to when he parted company with the deceased and under what circumstances she disappeared from his company. All these facts were within the special knowledge of the accused. He could, therefore, not keep silent and say that the obligation rested on the prosecution to prove its case. The accused failed to offer any explanation and presumption u/s 106 of the evidence Act can legitimately be drawn that the accused concealed the material facts which were within his special knowledge. He did not offer any exculpatory explanation to discharge the burden u/s 106 of Evidence Act.

28. In the case of Santosh Kumar Singh Vs. State thr. CBI, , the Supreme Court has held :

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"14. If an offence takes place inside the privacy of a house and in such circumstances, where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to

lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. "

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(C) Residence in Delhi

29. PW-2, 3 and 18 deposed that the accused had shifted to Delhi and brought the deceased to Delhi. The accused however emphatically denied if he ever resided in Delhi. The prosecution during the course of investigation recorded statements of PW-10 (Kamlesh Yadav) and PW-23 (Santosh Kumar) u/s 161 Cr.P.C. to prove that the accused had rented a room and stayed for some period with the deceased in Delhi. However, when both the witnesses appeared in the Court, they opted not to support the prosecution and completely turned hostile. When PW-10 (Kamlesh Yadav) was recalled for examination, he stated that Suchit (deceased's brother) used to reside as a tenant under him with his family in premises No.406, Baba Haridas Colony, Nangloi but Kaushal was not his tenant. He volunteered to add that Kausal was a tenant of Santosh. He further admitted that he had put his signatures on the memos (Ex. PW11/H and PW-11/K) and had signed both the documents after the police had read over and explained the contents to him. He further admitted that he was interrogated by the police at his residence. The investigation continued for number of days and the police used to frequently visit the area. He signed the documents when the police went to the house of Santosh Kumar for investigation. He further added voluntarily that on the day, lock was broken by the police, he was called at the police chowki where he was asked to sign certain documents.

30. PW-23 (Santosh Kumar) in the examination-in-chief deposed that he had six rooms at plot No.196, Baba Haridas Colony, Tikri Border. PW-10 (Kamlesh Yadav) used to rent the rooms. Kamlesh Yadav told him that he had given one of the rooms on 25.09.2005 to Kaushal Singh (the accused) and he along with his wife remained in that room for one or two days and thereafter they went away after locking the doors. Learned Counsel for the accused termed his deposition as "hearsay". Since PW-10 (Kamlesh Yadav) used to let out the rooms and had informed PW-23 (Santosh Kumar) that he had rented his one room to accused Kaushal Singh, this information cannot be considered as hearsay particularly when PW-10 (Kamlesh Yadav) in his testimony before the Court deposed that the accused Kaushal was a tenant under PW-23 (Santosh Kumar). The accused did not deny that his brother and "bhabhi" were not tenants in the room of PW-10 (Kamlesh Yadav). The accused did not examine any witness in defence to falsify the claim of the witnesses about his taking the room on rent in the property owned by PW-23 (Santosh Kumar). He also did not examine any witness from the locality to deny his residence there. Since accused's brother was already residing with his family in the tenanted room under PW-10 (Kamlesh Yadav), it was not unusual for the accused to rent the room in the adjoining property

owned by PW-23 (Santosh Kumar). As discussed below, the accused failed to prove his employment and residence in Punjab, in our opinion, the prosecution established that the accused resided as a tenant in the tenanted room owned by PW-23 (Santosh Kumar) on the relevant date in Delhi.

31. The mere fact that PW-10 (Kamlesh Yadav) and PW-23 (Santosh Kumar) have turned hostile would not affect the case of the prosecution adversely. The version given by both the witnesses partially supports the case of the prosecution, though in bits and pieces. When PW-23 (Santosh Kumar) was recalled for examination, he admitted that the accused was a tenant under PW-23 Santosh. PW-23 (Santosh Kumar) also admitted that PW-10 (Kaushal) was authorized by him to rent his rooms. As per the information given by him, he had let out one room to the accused Kaushal Singh. It is a settled principal of law that statement of a hostile witness can also be relied upon by the court to the extent it supports the case of the prosecution. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether.

(D) Working in Punjab

32. For the first time in the statement recorded u/s 313 Cr.P.C., the accused came up with the plea that he never resided in Delhi and since July, 2005 he was working as a labourer in Punjab. He visited native village in Bihar on 10.12.2005 and thereafter, surrendered in the Court. It is relevant to note that at no stage during the examination of twenty four witnesses by the prosecution, the accused ever claimed to be residing in Punjab since July, 2005. The parents and brother of the deceased were not suggested in the cross-examination about his stay in Punjab since July, 2005. Again the accused did not examine any witness to prove that he if ever worked as a labourer in Punjab. The defence pleaded in statement u/s 313 Cr.P.C. is highly vague and uncertain. He did not disclose the specific place in Punjab where he used to work with any particular concern/organization. He did not disclose his exact place of residence and place of work in Punjab. He did not produce any documentary proof whatsoever in support of his claim about his employment and residence in Punjab. He did not summon any witness to prove his employment in Punjab. He did not elaborate the nature of his job. Apparently, the accused gave false explanation to the incriminating circumstance appearing against him and withheld true facts. We have no hesitation to conclude that the defence taken by the accused is without any foundation and deserves outright rejection.

(E) Abscondance

33. Mutilated parts of the deceased's body were recovered on 27.09.2005 and 28.09.2005 near the place of residence of the accused in the area at Nizampur near Railway Phatak, Nangloi. According to the testimony of PW-11 (SI Sita Ram), accused's landlord identified the photo of the body as that of Baby Devi wife of Kaushal Singh. The police set out to apprehend the accused but he could not be traced despite best efforts. PW-11 (SI Sita Ram) visited District Nawada,

Bihar to find out the accused but he remained untraceable there. The IO obtained non bailable warrants against him from the concerned Magistrate. That forced the accused to surrender in the Court on 20.12.2005. Deceased's brother had already lodged a report against the accused and his family members at Nawada. The tenanted room of the accused and that of his brother in Delhi were found locked. On 21.12.2005, when the accused led the police to plot No.196, Baba Haridas Colony, the room was found locked and its lock was broken. He led the police to room in B-386, Baba Haridas Colony, where his brother used to reside and it was also found locked. The accused and his brother apparently fled after the occurrence after locking their tenanted rooms. The accused did not explain what forced him to abscond. He did not furnish any evidence/explanation as to where he was during this period. If the deceased used to reside with the accused since 23.04.1995 as claimed by him, it was his duty to find out her whereabouts/wellbeing. The accused did not explain if he remained in contact or touch with the deceased during this period. His conduct, failure to inform, or report to anyone that his wife who was brought to Delhi from her village and had gone missing makes the appellant's abscondance immediately thereafter a relevant and material circumstantial evidence.

34. In the instant case, the accused had no reason for being away from his normal place of residence. Search for the accused began after the dead body was found and was identified. Till then the offence that Baby Devi had died a homicidal death was not known to anyone but the appellant absconded almost simultaneously with the incidence. After the occurrence, he was not available for days together and despite securing non-bailable warrants, he could not be traced. Absconding in such a manner and for such a long period is a relevant consideration. It is not unknown that even innocent persons may run away for fear of being falsely involved in a criminal case but in the present case, in view of the circumstances discussed in the judgment and which have been established by the prosecution, it is clear that absconding of the accused not only goes with the hypothesis of the guilt of the accused but also points a definite finger towards him.

35. The circumstance of abscondance after the occurrence points an accusing finger against the accused. Abscondance being a conduct u/s 8 of the Evidence Act can be taken into consideration to prove his guilt.

(F) Motive

36. In a case based on circumstantial evidence, motive assumes great significance as its existence is an enlightening factor in a process of presumptive reasoning.

37. The family members of the deceased alleged that the accused used to harass the deceased on account of dowry demands. However, the prosecution failed to collect cogent evidence to prove "cruelty" u/s 498A IPC and benefit of doubt was given to the accused and he was acquitted of the charge. The mother of the

deceased further disclosed that the accused had illicit relationship with his bhabhi. In the absence of any positive evidence, the prosecution could not prove such objectionable relations. In the statement u/s 313 Cr.P.C. the accused denied his marriage with the deceased and even contended that she was alive and he was falsely implicated by her parents due to enmity. It appears that the accused has taken false and fabricated defence to scuttle the prosecution case. The relationships between the parties were strained and they had started living separate after one year of their marriage. The deceased was done to death soon after she was brought to Delhi. Apparently, the motive of the accused was to eliminate her after bringing her to Delhi. The deceased was a stranger to Delhi and was having no valuable articles to allure someone else to commit her murder brutally. There are no allegations of sexual assault or robbery of any valuable articles from her possession. There was no possibility of any stranger to bring an end to her life by chopping her body parts. Apparently, it was the handiwork of a person known to the deceased and the assailant wanted to conceal her identity.

38. The deceased was brought to Delhi on 22.09.2005 as disclosed in the complaint (Ex. PW-2/DA) lodged by the parents of the deceased soon after getting information from Delhi about her murder. Merely because in the Court they have given the date 25.09.2005 due to inadvertence, no adverse inference can be drawn against them. The Trial Court has discussed this aspect elaborately.

In the case of Rameshbhai Mohanbhai Koli and Others Vs. State of Gujarat, , the Supreme Court held that false plea taken by the accused in a case of circumstantial evidence is additional link in the chain of circumstances.

(G) Conduct

39. The conduct of the accused throughout is unreasonable, abnormal and unnatural. He denied his marriage with the deceased but pleaded that she had started living with him since 23.04.1995. He did not substantiate his contention by examining any witness including his family members. He even alleged that previous husband of the deceased Mantu Kumar was alive. The family members of the deceased categorically deposed that after his death in an accident, she was married to the accused and a son was born to her who expired. The accused even came up with the plea that Baby was alive and her parents have feigned her death to involve him in this case. Suggestion was put to PW-2 (Ramudit Kumar) by the accused that they used to pay due respect to the accused at the time of his visit to him. Again the counsel suggested the witness that he and Kaushal Singh were in extreme love and affection. The accused did not produce any evidence to show when and why, relations with the parents of the deceased became hostile to force them to falsely claim that the body recovered in Delhi was of their daughter. The defence taken by the accused is vague, uncertain, inconsistent and contradictory. It is beyond comprehension that close family members would commit mistake in identifying the photo of their near & dear one and would openly declare her dead.

(H) Recovery of weapon of offence

40. PW-4 (Mahipal) an independent public witness deposed that on 21.12.2005 when he was present in his fields, the accused was brought by the police and he joined the investigation. The accused took them near the bushes and got recovered a "dav". The IO prepared its sketch (Ex. PW4/A), kept it in a pullanda and seized it vide seizure memo (Ex. PW-4/B) bearing his signatures. The other police witnesses also deposed on similar lines. Learned defence counsel highlighted discrepancies in the testimony of the witnesses to show that no such recovery was effected at the instance of the accused. Since no blood of the deceased was detected and the weapon was not shown to the doctor, mere recovery of dav (Ex. P-1) easily available in the market cannot be taken an incriminating circumstance.

(I) Homicidal death

41. Mutilated body parts of the deceased were recovered on 27 and 28 September, 2005 from the bushes at Nizampur near Railway Phatak, Nangloi. PW-16 (Dr. Manoj Dhingra) conducted post-mortem examination of the body on 01.10.2005. As per post-mortem report (Ex. PW-16/A), time since death was approximately five days. No definite opinion regarding cause of death was given as the body was decomposed. Examining doctor noted that cut throat injury and other injury were postmortem (except injury No.2 on the left side of face). Since head, face and legs of the body were discovered in mutilated condition, it can safely be inferred that it was a case of culpable homicide.

42. The accused in the fag end of the case, for the first time on 08.03.2010 came up with the plea that the body recovered by the police was not that of Baby Devi. Prior to that, deceased's parents and brother had appeared and categorically stated that the deceased was the wife of the accused and after bringing her to Delhi, he committed her murder. At that time the accused did not deny that the body recovered in Delhi was not that of Baby. He failed to produce any evidence to show that Baby Devi was alive and the photo identified by the close relative of the deceased was not that of Baby Devi. Lodging of the case u/s 304B/498A IPC vide complaint case (Ex. PW-2/DA) reveals that close family members of the deceased were sure about the murder of Baby Devi and they identified the photo shown to them to be that of Baby Devi.

(J) Conclusion

43. In view of the above discussion and our appraisal and analysis of the evidence on record, we have no hesitation to hold that the prosecution has successfully established all the circumstances appearing in the evidence against the appellant by clear, cogent and reliable evidence and the chain of the established circumstances is complete and has no gaps whatsoever and the same conclusively establishes that the appellant and appellant alone committed the crime of murdering the deceased on the fateful day in the manner suggested by the prosecution. All the established circumstances are consistent only with the

hypothesis that it was the appellant alone who committed the crime and the circumstances are inconsistent with any hypothesis other than his guilt. It is most unfortunate that the husband of the deceased not only failed to perform his duties and obligations as husband to protect and take care of his wife and instead planned the most degrading and cold-blooded murder of the young innocent bride.

44. The findings convicting the appellant for the commission of offence punishable u/s 302 IPC are confirmed.

45. Regarding order on sentence, the Trial Court has awarded imprisonment for life to the appellant for committing the offence punishable u/s 302 IPC. However, it has also directed that he shall not be considered for grant of remission till he undergoes an actual sentence of twenty years. In our view, considering the facts and circumstances of the case, there was no justification for imposing this condition. The same is ordered to be modified and the sentence awarded to the appellant would be imprisonment for life with fine of Rs. 10,000/- u/s 302 IPC and RI for four years with fine of Rs. 2,000/- for the offence punishable u/s 201 IPC. Both the sentences shall run concurrently and the appellant shall have the benefit u/s 428 Cr.P.C. The appeal filed by the appellant stands disposed of, accordingly. The Trial Court record be sent back forthwith.