
(2014) 02 DEL CK 0106
In the Delhi High Court
Case No : Criminal A. 1287 of 2011

Krishan Ram

APPELLANT

Vs

State of The NCT of Delhi

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164 313
Evidence Act, 1872 — Section 101 106 27 8
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 3 ILR 2089

Hon'ble Judges : Sunita Gupta, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : Ajay Verma, for the Appellant; Sunil Sharma, APP, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Gupta, J.—Appellant was charged u/s 302 of the Indian Penal code for murdering his wife. He was convicted by learned Additional Sessions Judge vide judgment dated 23rd May, 2011, and order on sentence dated 31st May, 2011 in Sessions Case No. 92/10/08 arising out of FIR No. 369/2008 u/s. 302 IPC registered with PS Mehrauli whereby he was sentenced to undergo rigorous imprisonment for life and was further sentenced to pay a fine of Rs. 5000/-, in default of payment of fine, to further undergo simple imprisonment for a period of six months. The first information of the offence was lodged by the appellant himself on 19th July, 2008 at 8.15 a.m. at PS Mehrauli wherein he disclosed that he used to live in Bhatti mines and that on the previous night, at about 9:00 pm, he killed his wife Mrs. Kago @ Guddi by strangulating and thereafter, pushed her at the chowtri. She fell down with her face towards chowtri and that he remained in his room throughout the night and left the room at about 6:00 a.m. He further stated that he was scared of his in-laws, so he came to police station to tell the truth. This information was reduced to writing by Head Constable Babu Lal vide DD No. 3A. The copy of the DD-3A was handed over to Head Constable Rohtas, who along with Constable Manoj and accused, went to PP Bhati Mines. Head

Constable Rohtas handed over the accused to In-charge PP Bhati Mines who made entry in Roznamcha in this regard. Thereafter, SI Govind Chauhan along with the Head Constable Rohtas Singh, Constable Manoj, Head constable Chandermani, Constable Sheeshpal and accused reached the spot, i.e., Murti ka Makaan, Sanjay Colony, Bhatti Mines. There, the deceased Kago @ Guddi was lying with her face towards chowtri in the room. Blood was oozing from the mouth and nose of the deceased. Blood was also lying near her head and legs. Daughter of the deceased, namely, Nazo was standing outside the door of the room. Inquiries were made from Nazo. Her statement Ex. PW-18/A was recorded which was countersigned by her maternal grandfather Meer Singh which culminated in registration of FIR. Further investigation was assigned to Inspector Balram. Inspector Balram got the scene of crime photographed. Blood lying near the dead body, earth control and blood stained cement were lifted from the spot and were seized vide Ex. PW15/A. The dead body was sent to AIIMS Hospital for post mortem. Site plan Ex. PW24/A was prepared. Accused was arrested. He was got medically examined. His nail clippings of fingers were taken. Exhibits were sent to FSL, Rohini. After completing investigation, charge sheet was submitted against the accused.

2. Charge for offence u/s 302 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

3. In order to bring home the guilt of the accused, prosecution, in all, examined 25 witnesses. All the incriminating evidence was put to the accused. In his statement u/s. 313 Cr.P.C., he admitted that he was married to Kago @ Guddi in the year, 1990, however he denied that his relations with Guddi became strained after he started consuming liquor. It was admitted by him that he was residing with Kago and daughter Nazo in a tenanted room at Bhati Mines belonging to Smt. Murti Devi which was let out to him by Smt. Seeta for a sum of Rs. 200/- per month. Although at one stage, he denied that on the intervening night of 18th-19th July, 2008, he along with his wife was present in the rented accommodation while his daughter Nazo had gone to the house of her Bua but at other place, he admitted that when Nazo left for her bua's house, she saw the appellant and Kago present in the room whereas in the morning when she returned back, he was not present in the room. He admitted that he had gone to the police station on 19th July, 2008 to lodge the report regarding murder of his wife, however, according to him, he was falsely arrested in the case. According to him, his wife had given him food in the evening and he had gone to work at 11 Murti near Dhaula Kuan. He returned back to his house at 4 a.m. and large number of persons were present there. He found his wife lying dead. His father-in-law and relatives were also present and he enquired from his father-in-law as to why no report was lodged with the police. Thereafter, he went to police post for lodging the report. As the police personnel at police post did not listen him, he went to police station and lodged the report. He was falsely implicated in this case. He examined DW-1 Arjun Singh in support of his defence.

4. Vide impugned judgment, the appellant was convicted and sentenced as mentioned above. The same has been assailed by the appellant by filing the present appeal.

5. We have heard Sh. Ajay Verma, Advocate for the appellant and Mr. Sunil Sharma, learned Additional Public Prosecutor for the State and have perused the record.

6. Challenging the finding of the learned Trial Court, it was submitted by learned counsel for the appellant that the testimony of PW-3 Nazo does not support the "last seen" and possibility of someone else doing the crime is not ruled out. Prosecution has failed to establish beyond reasonable doubt that it is the accused who had committed the murder of his wife. PW-6 and PW-21 has not supported the case of prosecution. The prosecution witnesses rather prove the case of appellant that in the morning when the appellant returned back home after work, he found his wife murdered. Nazo has confirmed that when she returned to the house in the morning, her father was not there. Moreover, although as per the report of the doctor, injuries No. 3, 6, 7 & 8 were possible by hands, fingers and finger nails and nail clippings of the accused were taken but nail clippings of the deceased were not taken. The FSL report does not prove the prosecution story. The so called DD relied upon by the prosecution that the appellant came to police station and confessed his guilt cannot be taken as circumstance against the appellant as the Investigating Agency failed to establish beyond reasonable doubt that there was a confession of the appellant. On the basis of DD-3A, appellant cannot be convicted for the murder of his wife. The Investigating Officer was aware of the fact that a judicial confession was required to be proved by the prosecution if it intended to rely upon the same. However, the Investigating Officer moved an application for recording the alleged confession after three months. Unexplained delay in moving the application for recording the confession cast doubt on prosecution story. Moreover, the accused had not made the alleged confession and, therefore, he refused to make any statement before the Magistrate. It was further submitted that the prosecution has tried to build its case that the appellant was a habitual drunkard and while drunk, he used to quarrel with his wife as a result of which, he killed her. The story is false as the MLC of the appellant does not reflect the presence of alcohol or that the appellant was drunk on 18th July, 2008. The burden of proving its case beyond reasonable doubt is on the prosecution and not on the accused. The learned Trial Court has wrongly taken into account that as the accused failed to rebut his innocence and wife of accused was murdered in rented accommodation on the next morning, therefore, the defence taken by the accused is false. The case is based on circumstantial evidence. The prosecution has failed to establish the guilt of the accused beyond reasonable doubt, as such, he is entitled to be acquitted.

7. Rebutting the submission of learned counsel for the appellant, it was submitted by learned Additional Public Prosecutor for the State that the

prosecution case, although rests on circumstantial evidence but same has been proved beyond reasonable doubt. Nazo, daughter of the accused is the witness of "last seen" on the date of incident. Furthermore, the fact that relation between the appellant and his wife were not cordial also stands proved by number of prosecution witnesses. Moreover, after committing the murder of his wife, the accused himself went to police station and confessed his crime which was recorded by Head Constable Babu Lal by recording DD-3A and the same stands corroborated by number of other police officials. In fact, the police machinery itself was set in motion on the basis of this DD recorded at the instance of the accused. Police officials were not nurturing any ill-will against the accused for which reason they will implicate him by recording this DD. Moreover, once the factum of appellant being present with the deceased stands proved and the murder has taken place in the matrimonial home of the deceased, it was for the accused to explain as to how the death has taken place. Absolutely no explanation has been given. Rather the accused has tried to take a false plea of alibi by examining DW-1 which is an additional circumstance in the chain of circumstantial evidence. Under the circumstances, it was submitted that the impugned order does not suffer from any infirmity which calls for interference and appeal is liable to be dismissed.

8. We have given our considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record.

9. Post mortem examination on the dead body of Kago @ Guddi was conducted by Dr. Sukhdeep Singh (PW19) who found following anti mortem injuries on the person of the deceased:

1. Bruise bluish in colour 5x6 cms locate over right fronto temporal region.
2. Multiple scratches abrasions associated with bruise, reddish blue in colour over right lower cheek reaching below chin 6x4 cms in size, located 6 cms away from the mid line.
3. Multiple scratches abrasion 4 in number located in an area of 6x6 cms over right middle of neck reddish in colour located 6 cms away from the mid line.
4. Multiple scratch abrasion associated with bruise (reddish blue), 5x4 cms, 2 cms away from the left lip, 2 cms above the lower border of mandible.
5. Bruise, 4.5 cms x 3 cms, reddish blue located over the left border of mandible, 10 cms away from the mid line.
6. Abrasion, 1x1 cm reddish, 3 cm below the injury no. 5.
7. Abrasion 3x1 cm, reddish, 4 cms below chin, vertically placed, 2 cms away from the mid line.
8. Multiple scratch abrasions, reddish, 6x4 cms area, located 3 cms above the left clavicle, 5 cms away from the mid line.

9. Abrasion associated with bruise reddish blue, 2x2 cms over the lateral aspect of left upper hip and 18 cms away from the mid line.

10. Bruise, 4x2 cms bluish over the lateral aspect of lower thigh, 9 cms above right knee.

11. Bruise 5x5 cms, bluish over the front of foreleg 8 cms below the right knee.

12. Abrasion 2x2 cms on the lower lateral back, reddish, located 21 cms from the mid line.

13. Abrasion 2x1.5 cms, reddish located over the right lateral aspect of right elbow.

14. Abrasion 2x1.5 cms, reddish located over the right lateral aspect of right elbow.

15. Abrasion 2x2 cms, over the back of middle of right thigh reddish in colour.

10. It was opined that the cause of death was combined effect of smothering, throttling and cerebral damage. As per the subsequent opinion Ex. PX-1, injury nos. 1, 9, 10, 11, 12, 13, 14 & 15 are possible to be produced by fall on cemented edged chautri. Injury Nos. 2, 3, 4, 6, 7 & 8 are possible to be produced by hands, fingers and fingernails. Injury No. 5 is possible to be produced by hands and fingers. Smothering, throttling and head injury are individually and collectively sufficient to cause death in ordinary course of nature. All the injuries were anti-mortem in nature. Thus, it becomes clear that Kago met a homicidal death. It is not even the case of accused that it was a case of suicide or accidental death.

11. The crucial question for consideration, therefore is, who is perpetrator of this crime.

12. There is no eye-witness to the commission of crime. The present case is one of circumstantial evidence. Thus, there is a definite requirement of law that a heavy onus lies upon the prosecution to prove the complete chain of events and circumstances which will establish the offence and would undoubtedly only point towards the guilt of the accused. A case of circumstantial evidence is primarily dependent upon the prosecution story being established by cogent, reliable and admissible evidence. Each circumstance must be proved like any other fact which will, upon their composite reading, completely demonstrate how and by whom the offence had been committed. Hon"ble Supreme Court and this Court have clearly stated the principles and the factors that would govern judicial determination of such cases.

13. Reference can be made to the case of Sanatan Naskar and Another Vs. State of West Bengal, where it was observed as follows:-

27. There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eyewitness to the occurrence. It is a settled principle of

law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eyewitness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the accepted principles in that regard." 28. A three-Judge Bench of Hon"ble Apex Court in Sharad Birdhichand Sarda Vs. State of Maharashtra, held as under:-

152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant Vs. The State of Madhya Pradesh, . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of U.P., (1969) 3 SCC 198 and Ram Gopal Vs. State of Maharashtra, . It may be useful to extract what Mahajan, J. has laid down in Hanumant case (supra):

10....It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, , where the observations were made:-

19....Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

14. In view of the aforesaid principles governing the case based on the circumstantial evidence, let us turn to the case in hand. The circumstances relied upon by the prosecution to bring home the guilt of the accused are:-

1. Information given by the accused himself regarding committing murder of his wife;

2. Motive

3. Last seen evidence;

4. Absence of any explanation by the accused;

5. Plea of alibi taken by the accused.

15. Each of the incriminating circumstance set up by the prosecution shall be dealt with one by one.

Circumstance No. 1

16. Police machinery was set in motion on the basis of DD No. 3A recorded by HC Babulal, PW-15 who has unfolded that on 19.07.2008, accused Krishan Ram came to police station and stated that he lived in Bhati Mines. On the previous night, at about 9 p.m., he killed his wife Kago @ Guddi by strangulation and thereafter he pushed her at the chowtri. She fell down with her face towards chowtri and that he was in his room in the night and left the room at about 6 a.m. He further informed that he was scared of his in-laws and so he came to the police station to tell the truth. His statement was reduced into writing in the roznamcha as DD No. 3A, Ex. PW15/A. This DD was given to HC Rohtas. HC Rohtas has deposed that on receipt of DD No. 3A, he along with Ct. Manoj and accused Krishan reached PP Bhati Mines at about 9.15 a.m. where he handed over the accused to Incharge PP Bhati Mines SI Govind Chauhan where HC Chandermani was also present. It has come in their evidence that on interrogation, the accused told SI Govind Chauhan that he had killed his wife last

night i.e. on 18.07.2008 and that the dead body of his wife was lying in his room and he can point out the room where the dead body was lying. Thereafter SI Govind Chauhan alongwith HC Chandermani, Ct. Shishpal and accused Krishan Ram reached the house of Murti, Sanjay Colony, Bhati Mines where two rooms were constructed. The accused pointed out the first room. He identified the dead body of his wife which was lying on the chautri of the room. The face of the dead body was down towards the ground. Blood was oozing from her mouth and nose and blood was also lying near the head and legs of the deceased. Testimony of all the police officials in regard to giving of this information by the accused himself and then taking the police party to his house and pointing towards the dead body of his wife is consistent and despite lengthy cross examination, nothing material could be elicited to discredit their testimony. The submission of learned counsel for the appellant that the accused had merely gone to police station to inform about the murder of his wife, where he was falsely implicated in this case does not appeal to reason inasmuch as although it was suggested to PW15-HC Babulal that appellant contacted Constable Manoj and at the instance of his relative and Constable Manoj, he was beaten and then statement was manipulated but the same was denied by HC Babulal. Rather it has come in the statement of witnesses that when accused came to police station, none of his relatives were present there. In fact, in his statement recorded u/s. 313 Cr.P.C., he himself has taken the plea that when he returned to his house from his work at about 4 a.m., his relatives and father-in-law were present and he enquired from his father-in-law as to why he had not gone to the police. Thereafter, he went to police post for lodging the report. As the police officials of police post did not listen to him, he went to police station and lodged the report. It is not even his case that the report was manipulated by the police so as to involve him in this case. No animosity, ill-will or grudge has been alleged against any of the police officials for which reason instead of recording the information regarding murder of his wife, they will implicate him in this case. The testimony of police personnel have to be treated in the same manner as testimony of any other witness. The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good ground. (Vide Karanjit Singh vs. State (Delhi Admn.), Karamjit Singh Vs. State (Delhi Administration), (2001) 1 SCC (CrL.) 596; Dr. Sunil Clifford Daniel Vs. State of Punjab,

17. The earliest information given by the accused himself is admissible against him as evidence of his conduct u/s. 8 of the Evidence Act as held in Aghnoo Nagesia Vs. State of Bihar, . The information given by the accused himself regarding murder of his wife finds confirmation from the subsequent chain of events which reflects that police officials left for the spot at about 9:15 a.m. and reached Murti's house, Sanjay Colony, Bhatti Mines where accused identified the dead body of his wife which was lying on the chowtri of the room. The face of the dead body was down towards the ground. Blood was oozing from the mouth and nose of the deceased and the blood was lying near the head and legs of the

deceased. All this is admissible in evidence u/s 8 of the Evidence Act. In A.N. Venkatesh and Another Vs. State of Karnataka, , it was held that:

By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct u/s 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand v. State (Delhi Administration). Even if we hold that the disclosure statement made by the accused appellants (Ex. P14 and P15) is not admissible u/s 27 of the Evidence Act, still it is relevant u/s 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence u/s 8 as the conduct of the accused.

18. As such, factum of accused himself going to police station without any threat or pressure and giving information about murdering his wife and the reasons thereof and then accompanying the police party to his house and pointing out towards the dead body and identifying the same to be of his wife are relevant circumstances and are admissible u/s 8 of the Evidence Act.

19. The submission of learned counsel for the appellant that the appellant did not confess to the police regarding murdering his wife, and, therefore, when the application for recording his statement u/s. 164 Cr.P.C. was moved by the Investigating Officer, he refused to make any statement is devoid of substance. Sh. Sanjay Bansal, the then Metropolitan Magistrate (PW 25) has deposed that an application was moved before him on 03.10.2008 for recording the confessional statement of accused Krishan Ram by Insp. Balram. The accused however refused to make any statement as per the proceedings Ex. PW-25/A. The application itself was moved very belatedly by the Investigating Officer as it was moved on 3rd October, 2008, i.e., after a lapse of about 21/2 months of incident. This time gap was sufficient for the appellant to ponder over the consequences of admission of guilt. Moreover, there may be variety of the reasons which may have prompted the accused to refuse to make any confessional statement but from this fact alone, no presumption can be drawn that DD No. 3A was not recorded on the basis of information given by the accused to police.

Circumstance No. 2

20. The motive to commit crime is writ large, inasmuch as, in the first information given by the accused to the police, he himself has attributed the reason for murdering his wife as he suspected her character. Father of the deceased Meer Chand (PW1) has deposed that initially the accused kept his

daughter well, but subsequently he started consuming liquor and thereafter the relation between his daughter and accused became strained and accused used to give beatings to her. Ram Pyari (PW2) is step mother of the deceased. Although, she did not support the case of the prosecution probably for the reason that accused is her real brother, but she also admitted that initially accused kept the deceased well, but thereafter trouble started. She came to know that accused used to consume liquor and used to beat Kago. She also admitted that accused used to doubt on the chastity of Kago. Nazo (PW3) has also deposed that her mother was not having good character. She used to leave in the evening and did not return back for whole night. Her father used to suspect her character. Deepak Kumar (PW4), brother of the deceased also unfolded that accused-Krishan Lal used to consume liquor and used to quarrel with his sister. He further deposed that 4-5 days prior to the incident, his sister informed him that she had gone for work with his uncle's son and when she returned, accused gave her beatings saying that "haram ki kamai kar kay lai hai". Smt. Seeta (PW8), who let out the room to accused has also deposed that accused used to consume alcohol and used to quarrel with his wife. To the same effect is the testimony of PW22 Sunil Kumar, who also deposed that accused used to suspect the character of his wife. Under the circumstances, there is ample evidence available on record to show that accused used to suspect the chastity of his wife. There used to be frequent quarrels between them and that furnished a strong motive to eliminate the deceased.

Circumstance No. 3

21. When the police officials reached the spot, Nazo, daughter of the accused met the police officials at the spot. At that time she made a statement Ex. PW3/A to the police alleging, inter alia, that she along with her parents was residing in a tenanted accommodation at Sanjay Colony Bhati Mines. They were six brothers and sisters. Except for her, her remaining brothers and sisters lived in Rajasthan with her grand-parents. Her father was a drunkard and was addicted to liquor and bhang. Her mother was not having good character. Sometimes she used to go for her work and did not return to her house. Her father used to suspect her mother's character and on this issue they used to quarrel with each other. He used to beat her mother and threatened to kill her. On 18.07.2008, after taking food at about 8 p.m., she had gone to the house of her maternal uncle Deepu, which was her daily routine. At that time her parents were talking to each other in the room. The next day, at about 7 a.m. when she returned back to the room, she found the same bolted from outside. When she opened the door, she found her mother lying with her face towards the chowtri. She tried to get her up, but could not do so. She was under the impression that she is lying unconscious, as such she came out of the room and started weeping. Her father was not present at the time. After some time, her father came along with police and informed the police, that on the previous night he strangulated his wife and went to police station in the morning. Her father had killed her mother. She prayed for action. This statement culminated in registration of FIR against the accused. However,

when she appeared in the witness box, she did not support the case of prosecution in entirety, in as much as, she deposed that there was no quarrel between her parents. However, she reiterated that her other brothers and sisters used to reside in Rajasthan. She had gone to the house of her bua for sleeping and at that time her parents were present in the house. When she returned back at about 7:00 a.m. next day, she found her mother dead and her father was not there.

22. It is settled law that merely because a witness is declared as hostile, there is no need to reject his/her evidence in toto. The evidence of hostile witness can be relied upon, at least to the extent, it supports the case of prosecution. In *Sathya Narayanan Vs. State Rep. by Inspector of Police*, Hon''ble Supreme Court referred to its earlier decision rendered in *Mrinal Das and Others Vs. The State of Tripura*, where while reiterating that corroborated part of evidence of hostile witness regarding commission of offence is admissible, it was held as under:-

67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the Court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The Court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

23. Substantially similar view was taken in *Koli Lakhmanbhai Chanabhai Vs. State of Gujarat*, ; *Prithi Vs. State of Haryana*, *Ramesh Harijan Vs. State of U.P.*, In view of the same, that part of testimony of Nazo that after taking dinner, she went to the house of her bua leaving behind her parents in the matrimonial home, is admissible in evidence.

24. The testimony of Nazo that she used to go to sleep at night in the house of her bua/maternal uncle finds corroboration from the testimony of PW1 Meer Chand (her maternal grand-father), PW4 Deepak Kumar, her maternal uncle and PW13 Jawahar Lal. All of them have deposed that Nazo used to sleep in the house of her maternal uncle, however PW22, brother-in-law of the accused, has deposed that Nazo used to go to her bua's house to sleep. As such, although a slight discrepancy has appeared as to where Nazo used to go to sleep, whether in the house of her maternal uncle or aunt, but the fact remains that it stands

proved that Nazo was not available in the matrimonial home during night and only accused and the deceased used to remain in the house. On the fateful day also, as per the testimony of Nazo, when she had left her house at about 8:00 p.m., her parents were talking to each other and in the morning when she returned back at about 7:00 a.m. she found the door bolted from outside. She opened the kunda and found her mother lying on the floor. All this clearly showed that soon before her death the accused was "last seen" with the deceased. When the police officials came along with the accused they found the deceased lying with her face towards chautri. Blood was lying near head and legs of the deceased. Nothing was found scattered so as to create a doubt that some unknown person has entered or tried to commit burglary or rob the house, in which process the entrant might have murdered the deceased. As such, there was reasonable proximity of time between these two events.

25. The legal position pertaining to appreciation of circumstantial evidence of "last seen" has been summarised in a Division Bench decision titled as Arvind @ Chhotu and Others Vs. State, in the following words:-

(i) Last-seen is a specie of circumstantial evidence and the principles of law applicable to circumstantial evidence are fully applicable while deciding the guilt or otherwise of an accused where the last seen theory has to be applied.

(ii) It is not necessary that in each and every case corroboration by further evidence is required.

(iii) The single circumstance of last-seen, if of a kind, where a rational mind is persuaded to reach an irresistible conclusion that either the accused should explain, how and in what circumstances the deceased suffered death, it would be permissible to sustain a conviction on the solitary circumstance of last seen.

(iv) Proximity of time between the deceased being last seen in the company of the accused and the death of the deceased is important and if the time gap is so small that the possibility of a third person being the offender is reasonably ruled out, on the solitary circumstance of last-seen, a conviction can be sustained.

(v) Proximity of place i.e. the place where the deceased and the accused were last seen alive with the place where the dead body of the deceased was found is an important circumstance and even where the proximity of time of the deceased being last seen with the accused and the dead body being found is broken, depending upon the attendant circumstances, it would be permissible to sustain a conviction on said evidence.

(vi) Circumstances relating to the time and the place have to be kept in mind and play a very important role in evaluation of the weightage to be given to the circumstance of proximity of time and proximity of place while applying the last-seen theory.

(vii) The relationship of the accused and the deceased, the place where they were last seen together and the time when they were last seen together are also

important circumstances to be kept in mind while applying the last seen theory. For example, the relationship is that of husband and wife and the place of the crime is the matrimonial house and the time the husband and wife were last seen was the early hours of the night would require said three factors to be kept in mind while applying the last-seen theory.

The above circumstances are illustrative and not exhaustive. At the foundation of the last seen theory, principles of probability and cause and connection, wherefrom a reasonable and a logical mind would unhesitatingly point the finger of guilt at the accused, whenever attracted, would make applicable the theory of last-seen evidence and standing alone would be sufficient to sustain a conviction.

26. In State of U.P. Vs. Satish, it was held as under:

The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case, there is positive evidence that the deceased and the accused were seen together by witnesses-PW3 and PW5, in addition to the evidence of PW2.

27. In the instant case, the relationship of accused and deceased is that of husband and wife. The place of crime is the matrimonial home. The time the husband and wife were last seen was early hours of night. The accused himself went to give information admitting his crime. These factors unhesitatingly point the finger of guilt towards the accused. In this Court's opinion the prosecution was able to establish the "last seen" theory as far as the appellant is concerned.

Circumstances No. 4&5

28. Undisputedly, the offence has taken place in the dwelling house where accused was residing along with the deceased and prosecution has been able to establish that the accused was last seen with deceased, then, u/s 106 of the Evidence Act, 1872 onus of proof was upon the accused to show as to how his wife had received injuries. Section 101 of the Evidence Act lays down the general rule that in a criminal case, the burden of proof is on the prosecution and Section 106 is not intended to relieve it of that duty. However, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

29. The applicability of this provision has been explained by Hon''ble Supreme

Court in State of Rajasthan Vs. Kashi Ram, , where it was held as under:-

The principle is well settled. The provisions of Section 106 of the Evidence Act, 1872 itself are unambiguous and categorical 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. He must furnish an explanation which appears to the 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 specially 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. The principle has been succinctly stated in In Re: Naina Mohamed,

There is considerable force in the argument of counsel for the State that in the facts of this case as well it should be held that the respondent having been seen last with the deceased, the burden was upon him to prove what happened thereafter, since those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt.

30. In this context, observations made by Hon"ble Apex Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra, and particularly to paragraphs 15, 21 and 22 are reproduced as under:

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

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation 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. This view has been taken in a catena of decisions of the Hon"ble Supreme Court. *State of Tamil Nadu Vs. Rajendran*, ; *State U.P. Vs. Dr. Ravindra Prakash Mittal*, *State of Maharashtra Vs. Suresh*,); *Ganesh Lal Vs. State of Rajasthan*, and *Gulab Chand Vs. State of Madhya Pradesh*,

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. In *Nika Ram Vs. State of Himachal Pradesh*,] it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal Vs. State of Maharashtra*,] the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement u/s 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State U.P. Vs. Dr. Ravindra Prakash Mittal*,] the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly Hon"ble Apex Court reversed the judgment of the High Court acquitting the accused and convicted him u/s 302 IPC. In *State of Tamil Nadu Vs. Rajendran*, the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9 pm and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of

accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of crime.

31. Ram Naresh @ Lala vs. State, 2011 IV AD (SC) 534 was also a case where cause of death was asphyxia as a result of compression of neck by ligature. On facts it was found that it was homicidal death. Deceased was living with the accused and it was observed by this Court that it was for the accused to give explanation as to how the body of deceased was found lying on the sofa inside the room, which he failed to furnish and as such keeping in view totality of the circumstances it was held that the circumstances pointing to the guilt of the accused are completely inconsistent with plea of the innocence.

32. In view of the above, since the accused was last seen with the deceased, the burden of proof rest upon him to prove what had happened thereafter since those facts were within his personal knowledge. It was incumbent upon the appellant/accused to give explanation as to how Kago died, but he took up a stand of complete denial of his involvement in the crime and offered no explanation before Court, however, as stated above, his own conduct reflects that the police machinery itself was set in motion on the basis of information furnished by him to the police as to under what circumstances his wife met homicidal death.

33. To dislodge the circumstantial evidence led against the appellant/accused, learned counsel for the appellant has placed reliance upon the plea of alibi and had drawn the attention of this Court to the evidence of Arjun Singh (DW1) to assert that the appellant had gone to work at 11 Murti, Dhaula Kuan on 18th July, 2008 at about 8:00 a.m. along with 4-5 other labourers where they worked till 3:00 a.m. in the next morning. They returned back at about 4:00 or 4:15 a.m. The deposition of this witness does not help the appellant, inasmuch as, although according to him 4-5 other labourers were there along with them to work at 11 Murti, Dhaula Kuan, however, he was not able to tell the name of any of the labourer. Moreover, even after he came to know that accused has been booked for murder of his wife in the evening of 19th July, 2008, he did not go to the police station to inform the police that accused was with him from 8:00 a.m. of 18th July, 2008 till 3:00 a.m. of 19th July, 2008, so much so, he even did not tell this fact to the relatives of the accused. Even the employer at whose place the accused allegedly had gone to work has not been examined to substantiate this plea. Moreover, testimony of this witness is contrary to the stand taken by the accused. In his statement recorded u/s 313 Cr.P.C. he had taken a plea that on 18th July, 2008 his wife had given him cooked food in the evening and that he had gone to his work at 11 Murti at Dhaula Kuan. Therefore, according to him, he was very much present at his house in the evening of 18th July, 2008, however, according to DW1-Arjun Singh, he along with the accused and 4-5 other

labourers had gone to 11 Murti, Dhaula Kuan at about 8:00 a.m., therefore, a false plea of alibi has been taken by the accused which is an additional circumstance which goes against him and furnishes a link in the chain of circumstances appearing against the accused.

34. A feeble attempt was made by learned counsel for the appellant for submitting that although the nail clipping of the accused were taken, but no nail clippings of the deceased were taken and the FSL result did not reveal anything regarding the nail clipping of the accused, this can, at best, be said to be a lapse on the part of the Investigating Officer, which in the facts and circumstances of the case, coupled with the fact that ample evidence has come on record to establish the guilt of the accused, does not cast any dent on the prosecution case. Moreover, as per the subsequent opinion of Dr. Sukhdeep Singh, injury No. 2, 3, 6, 7 & 8 are possible to be produced by hands, fingers, and finger nails and injury No. 5 is possible to be produced by hands and fingers. It is not the case of accused that the injuries on the person of deceased were self inflicted. That being so, it was for him to explain as to how these injuries were sustained by the deceased.

35. Furthermore, the Investigating Officer of the case seized cemented concrete with blood, earth control cemented concrete, a pair of chappals belonging to the accused from the spot. Besides that, after the post mortem examination, the clothes of the deceased were handed over by the doctor to the Investigating Officer of the case. Nail clippings of the accused were taken. All these articles were sent to FSL. As per the report of FSL, Ex. PW7/A, blood was detected on cemented concrete, earth control cemented concrete and clothes of the deceased. As per report of the biology division, Ex. PW7/B, the species of origin was "human" on the blood stained cotton, ladies shirt and dupatta. The blood group was opined to be of "O" Group. All this goes to show that the theory of homicide is compatible with circumstances which stands established on the basis of evidence on record.

36. The circumstances viz. giving of first information to the police by the accused himself regarding murdering his wife, his last seen together with the deceased, motive to do away with the deceased, medical evidence pointing the death to be homicidal, a false plea of alibi coupled with failure on the part of the accused to furnish any explanation, unerringly point towards guilt of the accused and are completely inconsistent with the plea of innocence.

37. 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. In view of the above factual matrix and upon appreciation of evidence, we find that the evidence has been appreciated by the trial court in consonance with the rules and procedure of law. The findings can neither be termed as perverse nor improbable.

We find no merit in the present appeal and the same is dismissed accordingly. Copy of the judgment be supplied to the concerned Jail Superintendent for information of the appellant.