

(2009) 09 BOM CK 0110
In the Bombay High Court
Case No : Criminal Appeal No. 32 of 2008

Monica @ Mona D'Souza, presently in Central Jail	APPELLANT
Vs	
State of Goa	RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374, 428
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, 300, 302, 304, 85

Citation : (2009) 09 BOM CK 0110

Hon'ble Judges : U.D. Salvi, J; B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : S.G. Dessai and V. Parsekar, for the Appellant; W. Countinho, Learned Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By this Appeal filed u/s 374 of the Code of Criminal Procedure, the appellant's wife has challenged the judgment dated 23rd July, 2008 delivered by the Sessions Judge, Panaji, holding her guilty of offence punishable u/s 302 of Indian Penal Code and sentencing her to undergo life imprisonment and to pay fine of Rs.5000/- in default, to undergo simple imprisonment for 5 months. She is also convicted for the offence punishable u/s 201 of the Indian Penal Code and is sentenced to suffer simple imprisonment for a period of three years and to pay fine of Rs.1000/-, in default, to undergo imprisonment for one month. She was in custody during the investigation i.e. from 02.02.2004 till 13.04.2004, and that period has been set off in terms of Section 428 of Criminal Procedure Code.

2. The incident occurred on 02.02.2004 at about 14.20 hours at residential house of appellant and her husband Mohan Shenoy, situated at Robertson Mansion, Castelvado, Carona, Aldona. The prosecution alleges that the appellant/accused assaulted her husband with knife on chest and inflicted on him injury to which he

succumbed. Thereafter she hid the knife so as to destroy the evidence.

2. At about 15.10 hours, on 02.02.2004 Police Constable ? Laxman Gawas, examined as P.W.2, received telephone call from un- known person at Mapusa Police Station, stating that Mohan Shenoy was assaulted by appellant at his residence and Laxman informed this to duty officer Tulshidas Dhavaskar, Assistant Sub Inspector. Tulshidas along with police constable B.C. 5247 and lady police constable B.C. 3810 came to the spot. Police constable Gurudas Ghadi (PW-21) and Police Constable W.B. Bhagat deputed by Laxman (PW -2) on the spot were already there and the appellant was present in her flat. Her husband Mohan was lying in a pool of blood inside the flat in unconscious condition. Police shifted him to P.H.C. Aldona, where he was examined by P.W.13- Dr. Vasco Telles, who declared him as brought dead. A.S.I. Tulshidas (PW-6) suspected appellant in the matter and lodged complaint (Exh.24). Police Inspector ? Tushar Vernekar (PW-22) registered the offence and then drew panchnama of the scene of offence (Exh.15) in presence of P.W. 4- Rupesh Mhamal and another panch witness. A piece of cotton soaked with blood was found in the bed room and it was attached at Exh.1. After collecting the necessary sample and evidence, photographs were taken, dog squad was also summoned and appellant was brought to Mapusa Police Station and was arrested under arrest panchnama Exh.26 in presence of P.W.7- Smt. Suhasini Naik and another panch witness. The arrest was effected between 19.45 hours to 20.15 hours. She was then referred to Goa Medical College, where P.W.12 ? Dr. E.J. Rodrigues examined her at 9 p.m.. No injuries were found on her person, but blood stains were discovered on dorsum of her left foot. Her blood group was found to be ?ARh +ive?. She was examined for blood alcohol level at Asilo Hospital by P.W.9 ? Dr. Chandrakant Parab at 11.45 p.m., and was found to have consumed alcohol, but able to take care of herself. This certificate Exh.30 is on record. The investigating officer P.W.22 ? Tushar, recorded necessary statements, collected necessary samples and obtained sketch of the spot. On the next day, i.e. on 03.02.2004 appellant disclosed that she has concealed a knife near her residence and volunteered to show the same. Knife (Exh.27) was accordingly recovered vide panchnama Exh.28 in presence of P.W.8 ? Rupesh Narvekar and another panch witness. Knife and clothes of deceased were forwarded to the Superintendent of Police, C.I.D. Panaji on 15.03.2004 by P.W.22 for transmission to Central Forensic Laboratory for Chemical Analysis. Examination report at Exh.57 was issued by Dr. N.R.K. Rao (P.W.17) Junior Scientific Officer for CFSL, Hyderabad. P.W.18 ? M.R. Shankarpal, Junior Scientific Officer also conducted some test on sample of mud and his report is at Exh.49. P.W.19 Dr. Mohamad Afzal, Scientific Officer of CFSL examined Viscera of deceased and his report is at Exh.61. P.W.22 then submitted charge- sheet before the Judicial Magistrate First Class, Mapusa who by the order dated 18.05.2004 committed the matter to Sessions Court. Charges were then framed and explained to the appellant/accused, who pleaded not guilty and was tried for the same. Prosecution in all has examined 24 witnesses and then statement of accused u/s 313 of Criminal Procedure Code was also recorded. She

also filed her written statement in defence. The Sessions Court then heard the arguments and pronounced the impugned judgment of conviction.

3. We have heard Mr. S.G. Dessai, Senior Counsel with Mr. V. Parsekar, Advocate for Appellant and Ms. W. Countinho, learned Public Prosecutor for Respondent-State.

4. Learned Senior Counsel for the appellant has argued that the case is based on circumstantial evidence and the material brought on record by the prosecution does not constitute the chain. He further states that the said chain in any case is not so complete as to indicate nothing else, but guilt of the appellant. He argued that the evidence brought on record is not inconsistent with the presumption of innocence of appellant. He points out that P.W.1 ? examined by the prosecution to prove alleged extra judicial confession is not the same person whose statement was recorded by the police authorities and that person was Radha. Said Radha has not been examined and hence, the extra judicial confession cannot be looked into. Similarly, he argues that the alleged kitchen knife used by the appellant is being foisted on her, because its recovery is not u/s 27 of the Evidence Act. He states that the said recovery, statement and panchnama has not been established as required by law, and the dog used by the police could not lead police to the alleged heap of rubbles in which the said knife was concealed. He further argues that in any case, knife seized is claimed to have blood stains and mud with blood on it, while the CFSL has certified that there was no mud on knife and hence there was no mud with blood on the knife. He therefore, contends that the story of recovery is false and some knife is being introduced by the prosecution to falsely implicate the appellant/accused. He further argues that if the knife was used by appellant her finger prints would have appeared on it and police authorities did not take proper precaution to find out such finger prints which could have proved beyond doubt, that knife was never touched by the present appellant. He contends that the appellant is woman of advanced age i.e. about 58/59 years old and deceased was older than her. The prosecution has not brought on record any material or evidence to show any motive and hence merely because husband and wife were together in flat at the relevant time inference of her guilt could not have been drawn. In the alternative, he contends that the evidence brought on record by the prosecution shows that there used to be frequent quarrels between the husband and wife and on the fateful day, both were drunk. There is single stab injury on the vital part and the murder took place because of sudden and grave provocation, because of loss of self-control. Though initially the learned Senior Counsel tried to take recourse to Sections 85 and 86 of the Indian Penal Code, or then to right of self-defence under Sections 96 and 97 thereof, this defence was not seriously pressed and on next day entire arguments were confined to exception 1 and exception 4 to Section 300. He contends that the material on record does not show any motive, any pre-meditation and even any intention. He contends that to punish wife with life imprisonment for such unfortunate event at advanced age would not be justified. According to him, the case falls under 2nd part of Section

304 and the appellant must be let off with the punishment already undergone by her. She was in jail for the period from 02.02.2004 to 13.05.2004 and during the pendency of this appeal she has been granted bail. The learned Senior Counsel contends that burden was upon the prosecution to show by the evidence absence of circumstances, indicating availability of exceptions 1 and 4 in the present matter.

5. Learned Public Prosecutor on the other hand has contended that single blow always does not indicate absence of intention or pre-meditation. She points out that there is evidence available on record to show that only husband and wife were present in the flat when the murder took place and hence, burden was upon the appellant's wife to explain the situation and circumstances in which the incident occurred. She contends that instead of coming out with any definite stand, the appellant has continued to deny the episode, but that denial is also inconsistent. The conduct of the appellant immediately after the murder is very relevant and she confessed to P.W.1 about killing her husband. The learned Public Prosecutor, states that this confession to P.W.1 is also corroborated by evidence of other witnesses to whom the said fact was narrated immediately by P.W.1. She points out that there was no evidence of any sudden fight or provocation, but appellant after killing her husband took out the knife and went out of the flat, concealed it, came back and then started shouting. Her clothes were stained with blood and blood was also found on her foot. She could not explain how blood came on her clothes or how it came on knife or on her foot. Our attention is also invited to the Panchnama of scene of offence to show that how the blood was seen at various places. According to the learned Public Prosecutor, after committing murder, attempt was made to destroy the evidence and to mislead the investigation. If there had to be any plea of self defence or loss of self-control, appropriate plea in this respect ought to have been taken and learned Public Prosecutor invites our attention to the written statement filed by the appellant/accused u/s 313 of the Code of Criminal Procedure to show that there is no scope for considering either exception No. 1 or exception No. 4 in the present matter.

6. The appellant/accused is a retired teacher and perhaps she retired in 2004 itself, when this incident took place. She has disclosed her age to be 59 years when her statement u/s 313 was recorded on 13.06.2008. However, at one place her age is shown to be 62 years.

7. The circumstances looked into and found by the Sessions Court can be briefly mentioned below.

(i) Accused and deceased are wife and husband residing in the flat.

(ii) Accused and the deceased used to drink liquor and quarrel with each other and on the date of incident, there was quarrel.

(iii) Accused and the deceased were the only persons in their flat on 02.02.2004.

(iv) Medical Evidence.

(v) Extra judicial confession made by the accused to P.W.1.

(vi) Recovery of knife at the instance of the accused.

(vii) Blood detected on the clothes of the accused and also on the knife.

8. The Circumstance No. [i] considered by the Sessions Court about, the deceased and accused being husband and wife residing in the same flat. There are no arguments advanced before us and there is no challenge to that circumstance. That circumstance by itself is neither incriminating nor prejudicial to the appellant wife.

The Circumstance No. [ii], looked into by the Sessions Court is about frequent quarrels with each other and quarrel took place on the date of incident. Evidence of P.W.1 ? Rekha and P.W.23- Subhash has been relied upon for that purpose. Though some doubt is sought to be created about the identity of P.W.1 Rekha, we find said effort without any merit. Rekha has stated that her father's name was Shankar and in body of statement has stated her husband's name as Ashok. She has given her occupation as house wife and age as 46 years. She stated that she was residing in house No. 971, Castlewaddo, Carona, Aldona. Police statement recorded on 2.2.2004 by P.W.22 Venerkar, is of Mrs. Radha w/o Ashok Shirodkar. It shows age of Radha to be 46 years, her occupation to be housewife and her address as 971, Castlewaddo, Carona, Bardez, Goa. In the said statement Radha has stated that about 14.30 hours on 02.02.2004 she heard some shouts, and she recognized voice of appellant who was residing on first floor of Robertson Mansion Building. She went to the flat of the appellant and found appellant present there. Blood was present at the entrance of the sitting room and therefore she asked her what has happened. Appellant told her that appellant had stabbed her husband with knife and he was lying on the floor of bed room. Radha got scared, she went to the second floor where one Mrs. Meera resided along with her family and she told them this fact. One person by name Dadi, present at residence of Mrs. Meera and husband of Meera came down and gave call to police. Deposition of Rekha is on same lines. Her cross examination shows that she could not state when her statement was recorded by police and she also stated that her statement was not read over to her by police. She also stated that she was not present at the spot when police came there and she did not see the dead body after the incident. She stated that police did not record her statement on the date of incident. She stated that accused shouted in Kokani and she has also mentioned words in Kokani language used by the accused. She denied that accused did not use Kokani at all. She stated that accused did not appear to be nervous. She has stated that appellant and her husband used to quarrel some time and on the date of incident, she has heard accused and her husband quarreling for half hour. Husband of accused used to consume alcohol. She further stated that she did not know cause of quarrel between the accused and her husband. Thus in her entire cross examination no question about Radha

wife of Ashok has been put to P.W.1 Rekha Ashok Shirodkar. In her Section 313 statement, while answering question No. 13 accused accepted that evidence of P.W.1, that there used to be quarrel between the accused and her husband, was true. She also accepted that her evidence that on the date of incident there was quarrel for about half an hour, was also true and she stated that said quarrel was on account of debts which her husband owned to butcher and others. P.W.1 stated that she had informed the incident to Mrs. Meera Usman and her family. Prosecution has examined Dadi @ Sitaram as PW-11 and while answering question No. 123, appellant had accepted that P.W.1 had came to her flat from upper floor and at that time, she was screaming. This evidence therefore, shows that P.W.1 Rekha and person Radha whose statement is recorded by the police is one and same. The objection to circumstance [ii], sought to be taken on that account is therefore, misconceived. The quarrel with each other on the date of incident is thus proved on record. The fact that she was taken to Dr. Parab (PW-9), and she was examined, is also proved on record through evidence of said witness PW-9. He has stated that her mouth was smelling of alcohol and her speech was slurred, but her reflexes were normal and there was no injury on her body. He has not been subjected to any cross examination. In her statement u/s 313 accused has accepted her examination by P.W.9, but then has stated that his report was false. She filed her additional written statement u/s 313 under her own signature on 13.05.2008, in which she has stated that 02.02.2004 was festival of Id and Mohan had gone out early in the morning and came back drunk about noon time. He started shouting and using abusive language with loud voice. She told him to eat food and served him the same. After eating and after having a nap, she got up after some time to prepare tea. When she passed by the bed room, she noticed some blood on floor near his door and on peeping inside, she saw him fallen on floor and she got frightened. She ran out of the front door that was open and raised alarm and called for help. Her neighbors came, but she was upset and crying and she did not remember what happened thereafter. She denied that she killed Mohan or then hid the knife, as alleged by the prosecution. Thus, the fact that there was quarrel even on the date of incident and both husband and wife were drunk, has been conclusively established by the prosecution in the present matter.

Circumstance No. [iii], is about accused and deceased being only persons in their flat on 02.02.2004. The appellant has not challenged the said finding before us at all. Evidence of P.W.1, P.W.11 clearly show this position. Even in her 313 statement, while answering question No. 69, she accepted that she told P.W.6 - Tulshidas that flat was occupied by her self and her husband. However, she clarified that she disclosed this fact not at her flat, but at police outpost, Aldona. While answering question No. 71 she accepted that she also told P.W.6 that there was no other visitor to her flat on the date of incident. We have perused the evidence of P.W.6, P.W.1 and P.W.21 relied upon by the Sessions Judge for holding circumstance No. [iii] to be proved. We do not find any error in appreciation of evidence by the said Court.

Circumstance No. [iv], considered by the Sessions court is medical evidence proving homicidal death. Evidence of Doctor, location of injury, its placement and origin and direction/orientation all brought on record through medical evidence, are considered by the said Court, and injury has been found to be ante-mortem. It has been specifically brought on record that injury could not have been self-inflicted injury and it was not a case of suicide. The injury is stab injury entering the sixth inter coastal muscle and seventh coastal cartilage and it came from above and traveled downward in the body. This evidence clearly shows that the injury of such a grievous nature and depth could not have been inflicted by deceased himself at the place at which it is found. It is also to be mentioned that this circumstance has not been assailed before us by the appellant/accused in any way.

Circumstance No. [v] is about extra judicial confession made by the appellant to P.W.1. The objection taken to deposition of P.W.1 Rekha Shirodkar on the ground that police never recorded her statement and Radha Shirodkar whose statement has been recorded, was not produced as prosecution witness, is already overruled by us above. Visit of P.W.1-Rekha to the flat of appellant, after hearing her shouts for help, self-incriminating statement made by the appellant to her, is also mentioned by us above. P.W.1 thereafter, went to second floor to the flat of Mrs. Meera Usman and informed the persons present there about the incident. P.W.15 is said Meera Usman, while P.W.14 is her husband Usman Rahim and P.W.11 is the person by name Sitaram Digwekar @ Dadi. Visit of P.W.11 to flat of appellant because of knowledge he got from P.W.1- Rekha, is admitted, as already mentioned above. Perusal of evidence of P.W.11- Sitaram shows that he had been to his friend's house for lunch as it was Id day. At about 1.45 p.m., he heard noise from the flat of the accused and upon query, Usman told him that accused and her husband fought regularly. At about 2.30 p.m. one lady by name Rekha residing nearby came to the house of Usman and told Meera that something has happened in the flat of appellant and she told all of them to come and see what has happened. Usman and Meera did not want to get involved, but he volunteered. When he went to the house of the appellant, the appellant was standing in the sitting room and was asking for help. Door of bed room was slightly open and Mohan was lying in the bed room in pool of blood. He went down and called Aldona Police outpost. He stated that Rekha did not specify to them as to what had happened. He was declared hostile and in further questions by learned Public Prosecutor, he accepted that his statement was recorded by police on the same day and it was read over and explained to him and the same was proper and correct. He stated that he may have told police about Rekha informing Meera that appellant had stabbed her husband Mohan. He denied that he specifically heard Rekha telling Meera that accused had stabbed her husband Mohan, but admitted in his statement to police, that Rekha told Meera that appellant had stabbed her husband. He also accepted that when this was disclosed by Rekha to Meera, Usman and his wife Meera got scared. He further stated that when he entered the court he greeted accused saying "Aunty" and he

denied that he had deviated from his police statement with a view to help the accused. In cross examination, by the learned Counsel for the accused, he did not accept the suggestion that no such statement was made by him to police. Perusal of evidence of P.W.14 Usman Rahim also shows visit of Rekha to his residence and narrating the incident at the residence of appellant. He was also declared hostile and was cross examined and he stated that before Rekha came to his house, he had heard appellant and her husband quarreling since afternoon. He further stated that he told police that he knew about the incident. He stated that he did not hear Rekha saying that appellant had stabbed her husband with knife. When he was asked, whether he told police about such statement made by Rekha, he has stated that he was not sure and he might have stated so. The answer has been recorded in question and answer form. Witness was then confronted with portion of his statement and witness stated that, he might have stated so in his statement to the police, and he did not know. He also stated that he was not aware of his friend's Dadi's name as Sitaram. He further accepted that he came to court along with Dadi and he also stated that Dadi told that he would inform police. P.W.15- Meera Usman, accepted visit of Rekha, but again stated that Rekha only disclosed that something had happened in the flat of the appellant. She further stated that Dadi, went to call police. Prior to Rekha coming up to her flat, she did not hear any noise. She accepted that her statement was recorded by police, but then added that it was not read over to her. She further stated that no other lady had come to her flat to inform that accused had stabbed her husband with knife. The witness was allowed to be cross examined, and she stated that she was questioned by police on the same day. She further stated that she told police that, prior to Rekha visiting her flat, she had heard some noise from the flat of appellant and she was quarreling with her husband, which was going on since afternoon, as usual. She further stated that she did not tell police that Radha had come to her flat and told her that appellant had stabbed her husband with knife. Statement made by her and recorded in police statement was then shown to her and she replied that, she did not make any such statement. Though earlier she had stated that Rekha is not called as Radha, after some cross examination she stated that she was not in a position to state, whether Rekha and Radha is one and same person. To the suggestion that Rekha had come to her flat at 2.30 p.m., she stated that she was not in a position to remember time. She further stated that she knew her as Rekha. She accepted that she was on talking terms with the accused. Thus this evidence clearly show that after PW.1 Rekha heard the confession from appellant, she went to flat of Meera Usman (PW-15), and narrated that confession and then P.W.11 Sitaram @ Dadi came down, went to flat of appellant and then reported the matter to police. Cross examination of P.W.11 Sitaram and P.W.14 Usman, clearly show that they made disclosure to police about communication of extra judicial confession by Rekha to them. Their effort to resile from it, can be understood because appellant/accused is staying on flat below their flat, and they were on speaking terms with her. The very fact that, inspite of all this P.W.11 greeted accused by saying her Aunty, show soft

corner, which this witness ultimately had for appellant. This evidence of P.W.11 and Rekha and other witnesses is sufficient to conclude that such extra judicial confession was made by accused to P.W.1.

Circumstance No. [vi], is regarding recovery of knife at the instance of accused. The knife is a kitchen knife. Prosecution has examined P.W.22 Police Inspector who investigated the matter and one of the panchas namely Rupesh Narvekar (PW-8) to prove the recovery. The said panchnama is at Exh.28. The panchnama is signed by accused also. Evidence of P.W.8 Rupesh shows that, a workshop where he had given his bullet motor cycle for servicing was near Mapusa Police Station. He had given his bullet motor cycle there and when he was passing by the side of the Police Station a police constable informed him that he was called by PSI Tushar Vernekar. He went to police station, where he was requested to serve as panch witness for recovery panchnama. Another panch witness by name Godfrey was already present. Both of them agreed. Accused disclosed to them her name in Cabin of PSI -Vernekar and told that she had hidden the knife near Robertson Mansion Building and was willing to show the same. The Sessions Judge has recorded the entire statement made by the said witness, but then held that first incriminating part was not admissible. The said statement of accused was then recorded in their presence and first part of panchnama was concluded between 7.45 a.m. to 8 a.m. and it was signed by him and other panch, accused and PSI Vernekar. They then proceeded to spot where knife was hidden and witness has deposed how they reached the spot and how appellant took them near the well on right hand side of the building. Some rubble stones were near the well and accused stated that knife was under them. She recovered knife under the rubble stones and gave it to PSI Vernekar. It was kitchen knife and witness has described it in detail and stated that it was stained with blood and mud. He has then stated that it was seized, about picking of knife and control sample and drawing of second part of the panchnama at the place where knife was recovered. The second part of panchnama was also signed by him, other panch witness, accused and PSI Vernekar. He has identified his signature and said panchnama was marked as Exh.28. He also identified his signature on envelope and also knife at Exh.7. He was then subjected to cross examination and he stated that he was not aware of the inscription of the seal which was used to seal the envelope and the said inscription as well as number of seals were not mentioned on panchnama. The person who sealed envelope was also not mentioned in panchnama and fact of taking seals to Aldona was also not recorded in it. The names of persons who signed the envelopes were also not mentioned and exact words stated by accused were not recorded in the panchnama. This panchnama is also spoken of by investigating officer P.W.22. There is nothing in his cross examination to enable us to hold that the recovery u/s 27 is in any way vitiated. The arguments that when there was well nearby, the accused/appellant would have thrown the knife into the well and would not have placed under the rubbles, is hypothetical and cannot be sustained. No enmity with any of the panch witness or then reason for P.W.22 to falsely implicate her

in the matter, has been pointed out. The recovery panchnama (Exh.28) is proved conclusively and thus the recovery of knife stained with blood and mud has been established by the prosecution. Though there is some effort made to point out not sealing properly the seized material, procedural irregularities about not mentioning of movement of seals from the police station to the spot are not very relevant and cannot be made use of by appellant for her benefit. The Sessions Court has in paragraph No. 40 considered the judgment of Hon'ble Apex Court about such irregularity and as this aspect has not been argued before us, we do not find it necessary to refer to it in more details. Though finger prints on said knife could have been used by prosecution, the failure or omission to lift the same cannot be said to be fatal in present circumstances, as recovery of knife at the instance of the appellant/accused has been conclusively established.

Circumstance No. [vii], consists of finding of blood on clothes of accused and also on knife. So far as clothes worn by accused are concerned, there is no dispute about the same. In her Section 313 statement, also she has accepted that clothes seized by the police were on her person. She however, stated that those clothes were changed by her at the instance of the police in flat itself and not in police station. This by itself is not very helpful to the case of the appellant. Evidence of P.W.17 Dr. N.R.K. Rao, shows that, he prepared report at Exh.57 and he found blood on the clothes of the accused and also on knife. The said report at Exh.57, is duly proved by him under his signature. Nothing material has come out in his cross examination so as to discredit him. The Sessions Court has discussed the evidence of ASI Tulshidas, PW-6, and PW -7 Smt. Suhasini Naik, in whose presence clothes on person of the accused were seized. She also identified her signature on envelope in which those clothes were picked and sealed as also on arrest panchnama Exh.26. Her evidence has not been shaken in any way during her cross examination. Exh.57 also shows human blood on T-Shirt as well as Short Pant worn by the accused/appellant at the relevant time. The blood was also found on knife at Exh.7 and mud was also found containing blood. These circumstances have been established conclusively by the prosecution through evidence of PW-17. Accused was examined by P.W.12 Dr. Rodrigues, who had found blood on dorsum of her left foot. Accused stated that she had passed by the bed room of deceased and then she noticed some blood on floor near that door. Accused never stated that she entered the bed room and did not disclose and did not explain how blood came either on her T-shirt or either on Short-pant or on her dorsum of left foot.

9. The learned Senior Counsel for the appellant however, has invited our attention to the fact that PW-17 had forwarded the knife along with mud on it for examination to other expert namely P.W.18- Dr. Shankar Pal. This witness deposed that he received two sealed parcels marked as Exh.7B and 8 from Biology Division of CFSL and Exh.7B a polythene cover stated to containing knife Exh.7, had only brownish colour stains and no dry mud was available in that envelope. Exh.8 was sample of mud and as Exh.7B did not contain any dried mud, the said dried mud [alleged to be on knife] could not be compared with

Exh.8. By placing reliance upon this evidence, it is contended that knife sent to CFSL did not contain any mud on it and hence, it was not knife seized allegedly at the instance of the appellant. Advantage is sought to be taken of the fact that the movement of seal at the police station was not recorded in relevant register. We are not impressed by this argument. Examination of P.W. 17 clearly shows that, he found mud as also blood on the said knife and that mud was containing blood. There is no reason for this person to lie. He further stated that knife at Exh.7 was received by him under sealed envelope and there was no polythene bag in the envelope in which said knife was packed, as per his report. It is therefore, obvious that after his examination, he put that knife into polythene bag and forwarded it to Dr. Shankarpal for further examination. His evidence shows that the envelope Exh.7 was received by him contained knife Exh.7A and mud Exh.7B. He found blood on Exh.7B and human blood on Exh.7A. He could not detect human blood on Exh.7B as it was disintegrated. He could not detect blood group because of disintegration. He further stated that mud Exh.7B was to be compared with mud collected from knife and for that purpose sealed envelope at Exh.8 was forwarded by him to Dr. Shankarpal. He denied that he had not received any mud sample, Exh.7B and 8 from Biology Sub-Division, but he could not detect any mud on Exh.7B and it had only brownish colour stains. Thus the prosecution has succeeded in proving human blood on clothes worn by the accused, on knife and also on mud caught by knife when it was hidden. Accused did not have any injury to her person, thus the blood of deceased on her clothes, left foot has been proved on record.

10. We therefore, find that the circumstances sought to be proved by the prosecution have been conclusively established. Accused was alone with the deceased in the flat and deceased was murdered with kitchen knife, which was then concealed by accused under heap of rubbles. Blood of deceased was found on her clothes and also on her left foot and knife i.e. weapon of assault. The murder was committed by kitchen knife and immediately after the incident, accused confessed to PW-1 Rekha that she killed her husband Mohan. The circumstances clearly form a chain and conclusively implicate the appellant accused. There is no circumstance which is incompatible with the presumption of her innocence or indicate involvement of any other person, except accused. The principles laid by the Hon'ble Apex Court in its judgment reported at Sharad Birdhichand Sarda Vs. State of Maharashtra, , are clearly satisfied in the present matter.

11. Though it is the case of single blow, it is not always the case that it is culpable homicide, not amounting to murder. In 2008 AIR SCW 2599 (Bavisetti Kameshwara Rao v. State of A.P.), the Hon'ble Apex Court has held that the solitary injury is not always sufficient to apply Section 304-II of Indian Penal Code. Nature of offence depends upon other attending circumstances, like whether the act was pre-meditated, nature of weapon, nature of assault and the Hon'ble Apex Court has also held that narration of such circumstances cannot be exhaustive, but will depend upon the evidence available. Though there is effort

to urge that either exception 1 or exception 4 to Section 300 is attracted, on record no such plea is taken by the accused, and as rightly pointed by the learned Public Prosecutor, she has avoided to take any definite stand in this respect. Mere fact that both husband and wife were drunk is not sufficient to suggest availability of any such defence to attract exception 4. Appellant/accused has to show that there was sudden fight, there was no premeditation, the act was done in the heat of passion and that she had not taken any undue advantage or acted in cruel manner. Here, there is no such evidence and what has come on record is only quarrel. Even in her statement u/s 313, she has not spoken of any fight or quarrel. She has only mentioned that her husband came home drunk and was shouting. While answering question No. 176, she has stated that there was no fight at all. The evidence on record therefore, shows that the husband and wife used to get drunk and used to quarrel with each other. These circumstances, by themselves cannot support the plea of exception 4 or exception 1. The Division Bench of this Court has in a judgment reported at 1984 Cri.L.J. 1014 (Balasaheb Ramrao Latkar v. State of Maharashtra), held that loss of self-control contemplated in exception 1, can be answered in affirmative by applying two tests namely; Whether a reasonable man would have lost his self-control; and Second Whether thereafter he would have retaliated in same manner as the offender did.

12. In K.M. Nanavati Vs. State of Maharashtra, , the Hon?ble Apex Court, states that culpable homicide will not be a murder, if the following conditions are satisfied, and those conditions are:- (1) Deceased must give provocation to accused; (2) The provocation must be grave; (3) Provocation must be sudden; (4) Because of said provocation, the offender is deprived of his power of self-control; (5) He should have killed the deceased during continuance of the deprivation of the power of self-control; and (6) The offender must have caused the death of person who gave the provocation or that of any other person by mistake or accident.

13. In present case, when appellant/accused was alone with the deceased in her flat, burden was upon her to explain any of the circumstances which provoked her or made her to loose her self-control. There is absolutely no such circumstances brought on record even indirectly. The use of weapon like kitchen knife and the force with which it has been used, act of concealing the knife in rubble thereafter does not show any deprivation of power of self-control. Not doubt, the conduct of the appellant/accused in confessing the crime to P.W.1 may sound inconsistent, but, then by itself, it may not be sufficient to justify the act of concealing the knife in heap of rubble. It appears that after the crime was committed, she went down, concealed the knife, came back and started shouting. We therefore, are not in a position to hold that in present circumstances, culpable homicide of her husband did not constitute murder.

14. The burden is always on prosecution to prove the guilt of the accused beyond reasonable doubt, but as held by the Hon?ble Apex Court in the judgment

reported at Shambu Nath Mehra Vs. The State of Ajmer, , the facts especially within the knowledge of the accused cannot be proved by prosecution. The appellant/accused always knew what actually transpired and there is no attempt made to bring on record any circumstances indicating any grave and sudden provocation or loss of self-control, by her. We are therefore, not in a position to accept the arguments of learned Senior Counsel, that appellant needs to be punished u/s 304.

15. With the result, we do not find any merits in the appeal. The appeal is accordingly dismissed. No cost.