
(2015) 07 SHI CK 0061

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal Nos. 4256, 4258 and 4263 of 2013 and 24 of 2014

Neelam Kumari and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 164, 313

Evidence Act, 1872 — Section 101, 106, 114

Penal Code, 1860 (IPC) — Section 120-B, 201, 302

Citation : (2015) 07 SHI CK 0061

Hon'ble Judges : Rajiv Sharma, J; Sureshwar Thakur, J

Bench : Division Bench

Advocate : Anup Chitkara, for the Appellant; Ramesh Thakur, Assistant Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J—Since all these appeals have arisen out of the judgment and order, dated 30.11.2013, the same were taken up together for hearing and are being disposed of by this common judgment.

2. These appeals are instituted against the judgment and order, dated 30.11.2013, rendered by the learned Additional Sessions Judge (1), Una, District Una, H.P. in Sessions Case No. 18/2010, whereby the appellant/accused Vikasdeep was charged with and tried for an offence punishable under Section 302 of the Indian Penal Code, whereas the remaining three accused, namely, Navdeep, Ramandeep and Neelam Kumari were charged with and tried for offences punishable under Sections 201 read with Section 120-B of the Indian Penal Code. Appellant/accused Vikasdeep was convicted and sentenced to undergo life imprisonment for the commission of an offence under Section 302 of the Indian Penal Code and was ordered to pay a fine of Rs. 25000/-. He was ordered not to be released from the prison till his death. Appellants/accused Navdeep, Ramandeep and Neelam Kumari were convicted and sentenced to

undergo simple imprisonment for a period of two years with fine of Rs. 5000/- each for the commission of offence under Section 201 of the Indian Penal Code and in case of default of payment of fine, to undergo simple imprisonment for a period of one year each.

3. Case of the prosecution, in a nut-shell, is that on 16.06.2010, Vikasdeep dropped Neelam Kumari at her School at 7:00 a.m. in a car and then returned to his house. Sarita (deceased) and Vikasdeep took breakfast at 8:00 a.m. and thereafter Vikasdeep asked Sarita to mop up the floor. Vikasdeep was not satisfied with the work of Sarita. He slapped her and picked up a stick and gave beatings to Sarita. She became unconscious. Vikasdeep picked Sarita from courtyard and put her on a mattress placed on the floor. The girl succumbed to injuries. Vikasdeep thereafter brought Neelam back from her School at 1:30 p.m. and told her about the girl. Vikasdeep also consulted his elder brother Ramandeep and younger brother Navdeep. They all conspired together and buried the dead body of deceased in Jhola Khad by taking assistance of Vikram @ Vikku to whom they have called with his tractor and spade at Jhola bridge during the night time. They told Vikram that they have to bury the ashes of havan at a sacred and holy place. When the local inhabitant did not see Sarita for 2-3 days and the accused failed to give satisfactory answer to their queries then they suspected some foul play. The accused conspired and lodged false report at Shahpur Police Station. The local inhabitants also made complaint to the police and the police started investigation. The accused tried to satisfy the police with the false report lodged by them. The police also tried to contact the brother of the deceased. Then, Neelam alongwith Vikram Singh and one driver went to Chamba and brought the brother of Sarita to Pandoga. The brother of Sarita made statement to the police, on the basis of which, an FIR was registered. A disclosure statement was made by accused Vikasdeep regarding the dead body of Sarita. The body of deceased was exhumed from an isolated area in the Khad in the presence of witnesses and doctors. The general condition of the body was assessed by the team of doctors at the spot and thereafter, the same was sent to IGMC, Shimla for post mortem as the body had putrefied due to the passage of time. The police had taken into possession the weapon of offence, mattresses, tractor, spade etc. The birth certificate of deceased was also obtained. The statement of Vikram @ Vikku was also recorded under Section 164 Cr. P.C before the Judicial Magistrate 1st Class-2, Una. The case was converted into murder. The matter was investigated and the challan was put up after completing all the codal formalities.

4. The prosecution has examined as many as 43 witnesses to support its case. The accused were also examined under Section 313 of the Cr. P.C. Accused have denied the prosecution story. The accused have also examined five witnesses. The accused were convicted and sentenced, as noticed hereinabove. Hence this appeal.

5. Mr. Anup Chitkara, Mr. Atul Jhingan and Mr. Vijay Chaudhary, Advocates have

vehemently argued that the prosecution has failed to prove its case against the appellants/accused.

6. Mr. Ramesh Thakur, learned Assistant Advocate General has supported the judgment and order, dated 30.11.2013.

7. We have heard the learned counsel for the parties and gone through the judgment and records, carefully.

8. PW-1 Sh. Sardari Lal deposed that Madam Babita was posted in the School in their village Kathyadi. Accused Neelam was also posted there. Madam Babita had told them that accused Neelam needs a girl child. Kumari Sarita was brought to village Tikri by her mother and handed over to accused Neelam. Accused Neelam firstly took Kumari Sarita to her village Samot. From Samot, accused Neelam brought Sarita to her village Pandoga. Accused Neelam telephoned Madam Babita requesting her to send him to Shahpur in District Kangra to see his sister. He also talked on telephone with Neelam. He inquired from accused Neelam how would he come to Shahpur. On this, accused Neelam told him that she had already sent a vehicle to fetch him. A white coloured car belonging to the accused came there. Two persons were travelling in that car. He boarded the car from Tikri and came to Shahpur. At Shahpur, accused Vikasdeep and accused Neelam met him. He inquired from them about the whereabouts of his sister. They told that Kumari Sarita had been lost at Shahpur. Accused Vikasdeep and Neelam went to Police Post, Sihunta. Police told them that the report should be lodged at the place where Kumari Sarita went missing. Accused told the Police that Sarita went missing near Draman. Police told them to go to Police Station, Shahpur. They went to Police Station Shahpur on the same night. He lodged a report in Police Station, Shahpur to the effect that Kumari Sarita was missing vide Ex. PW1/A. He went back to his village Kathyadi. Accused Neelam asked him to come back to Pandoga. Again, the vehicle was sent by the accused. At Shahpur, accused Vikasdeep and Neelam met him. He accompanied them in the car and came to Pandoga. He kept on inquiring from the accused about the whereabouts of Sarita. They remarked that he should not worry and she will be traced out. Sarita could not be traced. They went to Police Post Pandoga. The police conducted the inquiry. The accused were insisting that he should tell Pandoga Police that Kumari Sarita was lost when she was with him. He made the statement Ex. PW1/B before the police at Pandoga. After 2-3 days, the dead body of Sarita was recovered from the Khad. It was kept in a jute bag tied with a red coloured string. It was opened. He identified the dead body. The bag and the dead body were taken into possession by the police vide memo Ex. PW1/C. In his cross-examination, he denied the suggestion that when he came to Pandoga, he noticed that many people were inimical to accused Vikasdeep and Neelam. He also denied the suggestion that at the instance of those persons and the police, he made a wrong statement Ex. PW1/B. He identified the dead body of Kumari Sarita from her cheeks and forehead. He denied the suggestion that the dead body was not of Kumari Sarita.

9. PW-2 Smt. Bimla Devi testified that during the summer season, she heard the cries of a child coming from the house of the two accused. She was spreading the washed clothes on the roof of her house. On the same day, during the night, at about 10-11 p.m., there was power failure. She and her children started moving in the courtyard of their house as they were unable to sleep due to the hot weather and power failure. She heard the noise of the shutter of the house of the accused. A car went towards the bridge with the head lights off. The car belonged to the accused. In her cross-examination, she denied the suggestion that her family has ever raised loan from Pandoga Society.

10. PW-3 Smt. Naresh Kumari deposed that accused Vikasdeep and Neelam were Government servants. Once she had gone to the house of accused Vikasdeep and Neelam. At that time, Sarita met her. On 16.06.2010, at about 1-1:30 a.m., she saw the car of accused Vikasdeep. It came from the side of the bridge to the house of the accused.

11. PW-4 Smt. Raksha Devi deposed that on 16.06.2010 at about 9-10:00 a.m., she was going to fetch the grass. Cement blocks were lying outside the house of the accused Vikasdeep. Accused Vikasdeep was forcing Kumari Sarita to lift the blocks. She was unable to lift the blocks. On this, she asked accused Vikasdeep why he was forcing Sarita to lift the blocks. Accused Vikasdeep stared at him. She went to the fields. Accused Vikasdeep had slapped and kicked Kumari Sarita in her presence and she was unable to lift the block. She has denied the suggestion that she never spotted accused Vikasdeep forcing Sarita to lift the blocks.

12. PW-5 Sh. Sat Pal Saini deposed that accused made a disclosure statement that he could identify the place where the dead body was kept. He put his signatures on Ex. PW5/A.

13. PW-6 Sh. Santokh Singh deposed that accused Vikasdeep and Ramandeep identified the place where the dead body was concealed. The dead body was dug out from the pit firstly with a spade (Kassi) and thereafter with the hands. It was in a gunny bag. The dead body was identified to be of Kumari Sarita by her brother. Memo Ex. PW1/C was prepared to this effect.

14. PW-7 Smt. Babita Kumari deposed that Neelam Kumari was posted as a teacher in the School from where she used to get the pay, i.e., Government Primary School, Tikri. From Tikri School, accused Neelam was transferred to Una. Accused Neelam asked her to inquire about some female child to be taken to Una. Accused Neelam remarked that she will educate that child and even get her married. Smt. Brahmo Devi, the mother of Kumari Sarita met her. She had a talk with Smt. Brahmo Devi and conveyed to her the requirement and feelings of accused Neelam Kumari. She told Smt. Brahmo Devi that she should personally meet accused Neelam and decide about sending Kumari Sarita after consulting her family members. After that, Kumari Sarita stopped coming to Kathyadi School. Her mother Smt. Brahmo Devi approached her for issuance of the school

leaving certificate. The copy of the certificate is Ex. PW7/A. On 22.06.2010 at about 11:00 -11:30 a.m., accused Neelam Kumari rang her up on her mobile phone number 94186-06935. Accused Neelam Kumari told her that she wanted to talk to Sh. Sardari Lal, the brother of Kumari Sarita. She sent that student alongwith another student to call Sh. Sardari Lal. She told accused Neelam Kumari that she should call her again after about 20 minutes. She again received a call from accused Neelam Kumari after 20-25 minutes. Accused Neelam Kumari then had a talk with Sh. Sardari Lal on her mobile phone.

15. PW-8 Sh. Satnam Singh deposed that accused Vikasdeep disclosed before the police that he could get the danda and the mattress recovered from his house. Accused Vikasdeep told the police that the danda had been concealed in the grass of the kitchen garden, whereas the mattress had been washed and kept in the upper floor of the house. The statement was recorded vide Ex. PW8/A.

16. PW-9 Sh. Harbhajan Singh deposed that the danda was handed over by accused Vikasdeep to the police, which was concealed near a mango tree. Accused Vikasdeep then got recovered a mattress from the bed box lying in the upper storey of his house. The same was handed over to the police.

17. PW-10 Sh. Vikram Singh @ Vikku is the material witness. According to him, he received a phone call on his mobile phone No. 98161-63714 from accused Navdeep. His mobile phone number was 98050-33390. Accused Navdeep told him that he needs his tractor-trolley during the night. Again, around 10:30 p.m., accused Navdeep rang him up and asked him as to whether he was free. He conveyed to accused Navdeep that he was free. Accused asked him to come to Jhola Khad alongwith the tractor and a spade (Kassi). He reached the bridge of Jhola Khad at about 11:30 p.m. alongwith his tractor and Kassi. A white coloured maruti car was standing on the bridge. Its registration No. was HP-39A-3379. Accused Vikasdeep, Navdeep and Ramandeep were sitting in the car. Accused Navdeep came out of the car and remarked that havan samgri was to be dumped. He asked the accused to dump the havan samgri at that place only. On this, accused Vikasdeep came out of the car and remarked that the same was to be dumped somewhere near to the water. Accused Vikasdeep even remarked that the Car cannot go to that place and only the tractor can go there. Accused Navdeep then remarked that he will stay back, whereas, the other two accused would accompany him on his tractor. Thereafter, accused Vikasdeep opened the dicky of his car and took out a gunny bag which was tied. Accused Vikasdeep then kept that gunny bag on the hook of the tractor and boarded the same. Accused Ramandeep boarded the tractor carrying a torch. He started the tractor. They went to a place near the water in the kahd. Since the way for going towards the water was in a bad condition, accused Vikasdeep asked him to stop the tractor. He stopped the same. Then, accused Vikasdeep got down from the tractor, picked up the gunny bag and started moving on foot. Accused Ramandeep took the spade from him. He also got down from the tractor and started walking with the kassi and torch in his hands. The accused asked him to

switch off the lights of the tractor. Both the accused walked for about 60-70 meters. They switched off the torch and came back after about 25 minutes after dumping the gunny bag. He turned the tractor. Then, he, accused Vikasdeep and Ramandeep came on the tractor up to the bridge where the car was parked. Both the accused alighted from the tractor near the car. Thereafter, accused Vikasdeep, Ramandeep and Navdeep went away in the Car and he returned to his house alongwith the tractor and Kassi which was returned by the accused. On 21.06.2010, when he went to Petrol Pump, Bhadsali to get the diesel filled in the tractor, he noticed that a lot of villagers had assembled near to the barrier. Accused Navdeep was present there. He stopped the tractor. He went to inquire from the villagers as to why they had assembled. The villagers remarked that Kumari Sarita was missing. She might have been killed. Accused Navdeep was saying to the villagers that the girl would be traced out. He was taken to a side by accused Navdeep. He remarked that Kumari Sarita, who had been kept by his brother accused Vikasdeep, was murdered by him. Accused Navdeep even told him that during the night of 16.06.2010, they did not carry the havan samgri in the bag on his tractor. He told that actually the dead body of Sarita was there in the bag. Accused Navdeep even threatened him not to disclose the same to anyone. On 24.06.2010, accused Navdeep again rang him up and asked him to come so as to drive the Car for going to Shahpur. He told him, that he could not drive the car. He engaged one Sh. Sonu to drive the car. When he and Sonu were standing on a shop near the house of accused Navdeep, he came there in a Car. Accused Neelam Kumari was sitting on the rear seat of the car. Accused Navdeep got down from the car. Sh. Sonu then started driving the car. He sat with him on the front seat of the car. Accused Neelam Kumari kept on sitting on the back seat of the car. When they reached Shahpur, accused Neelam Kumari asked them to stop the car. The car was stopped by the side of the road in Shahpur near to a house. Accused Neelam Kumari got down from the car and went inside the house. Next day, around 6:00 a.m., one boy came out of that house. He asked him and Sonu to sleep and remarked that he will drive the car for going towards Draman. The boy drove the car for some distance and then stopped it on a bridge. The boy got down and made a phone call. After 10-15 minutes, Sh. Sardari Lal came on the spot. They came to Shahpur to the house in which accused Neelam Kumari had gone. After some time, he, Sh. Sonu, accused Neelam Kumari and Sh. Sardari Lal started back for Pandoga. His tractor and car were taken into possession vide memo Ex. PW10/A.

18. PW-11 Sh. Charan Singh deposed that accused Ramandeep had identified the place from where the dead body was recovered. Accused Vikasdeep had also identified that place. PW-12 Sh. Man Singh deposed that the dead body of a girl was recovered. He accompanied the police to the residence of accused Vikasdeep. Accused Vikasdeep was also with them. A white coloured maruti car was standing outside the gate of the house of accused Vikasdeep. The white coloured car and documents were taken into possession by the police vide memo Ex. PW12/A.

19. PW-13, Sh. Arjun Singh is not a material witness. PW-14 Sh. Vijay Singh deposed that the mat and cardboard were taken into possession vide memo Ex. PW14/A. PW-15 H.C. Harish Chander proved Ex. PW15/A as well as copy of Parivar register Ex. PW13/B. On 3.8.2010, Smt. Brahmo Devi, the mother of the deceased came to Government Medical College and Hospital, Tanda for DNA test. Application Ex. PW15/B was moved by him before Dr. Imran Sabri, DNA expert.

20. PW-16, Lady Constable Promila Devi deposed that on 23.06.2010, report No. 13-A was entered by her. Sh. Sardari Lal as well as the accused namely Vikas Deep and Neelam had come to the Police Station to lodge the report. She proved copy of rapat rojnamcha register Ex. PW16/A

21. PW-17 Smt. Bramo Devi is the mother of the deceased. She deposed that one teacher of the School told her that her daughter was to be given to accused Neelam. Accused Neelam was also teaching in the School. Accused Neelam told her that she would bring up, teach and thereafter marry her daughter. On this, she handed over the custody of Kumari Sarita to accused Neelam at Village Tikri. She brought the School certificate of Kumari Sarita from the School.

22. PW-18 ASI Harnarayan Singh deposed that two males and a female came to the Police Post, Sihunta, District Chamba on 22.6.2010. The males disclosed their names as Sh. Sardari Lal and Sh. Vikas Deep. The female disclosed her name as Smt. Neelam. Accused Vikasdeep told him that they had taken the sister of Sh. Sardari Lal for bringing her up and educating her to Una, since his wife was transferred to Una. Accused Vikasdeep even told him that on 20.6.2010, he and his wife had brought Kumari Sarita in their Car and handed her over to his brother Sh. Sardari Lal at Kangra. He advised the accused to go to Police Station, Shahpur, since Draman Bus Stand, where Kumari Sarita reportedly went missing falls within the jurisdiction of the said Police Station. Accused Vikasdeep and Neelam were perplexed. They and Sh. Sardari Lal could not satisfy her and left Police Post, Sihunta.

23. PW-19 Head Constable Ashok Kumar has proved CD Ex. PW19/A. PW-20, Sh. Manwinder Singh deposed that at the instance of Sh. Charanjit Singh, he handed over SIM Card No. 98050-33390 to accused Navdeep. PW-21 Smt. Kaushalya Devi deposed that accused Vikasdeep had submitted his proposed tour programme in the office vide Ex. PW21/C. Accused Vikasdeep had submitted an application for the grant of casual leave from 22.06.2010 to 24.06.2010 vide Ex. PW21/F

24. PW-22 Smt. Sudarshana Kumari deposed that the casual leave application of accused Vikasdeep was received by her on 24.6.2010 vide Ex. PW21/F. On 22.6.2010, accused Vikasdeep telephoned him and informed that he wanted to avail the leave from 22.06.2010 to 24.6.2010.

25. PW-23 Sh. Sandeep Singh deposed that Sh. Vikram alias Vikku telephoned him and told him that he had to drive a car towards Chamba. He went to the shop/karyana store in the village around 11-11:30 p.m.. Accused Navdeep came

there in a car. Accused Neelam was also there in the Car. He started driving the same. They went in the Car to Shahpur. Accused Neelam went inside a house. He remained sitting in the car. One person came from the house and asked him to come inside to have the tea. After he consumed the tea, that person took the keys of the car from him and remarked that now he would drive the Car. From Shahpur, he alongwith Vikram and the person who drove the car went towards Draman. They travelled for about 15-20 kms. They came back to Shahpur with the boy who had boarded the car around 6-6:30 a.m. Thereafter, they came back to Pandoga.

26. PW-24 Smt. Saroj Kumari has proved the admission form Ex. PW-24/A. It was filled up by Neelam Kumari as guardian of Kumari Sarita. Kumari Sarita did not come to the School after the day of her admission to the School, i.e., 11.06.2010. On 22.06.2010, she was taking the class. Accused Neelam Kumari approached her and remarked that she has to go back to her house. However, accused Neelam Kumari did not return to the School, as promised.

27. PW-25 Sh. Om Raj Kanwar deposed that on 19.06.2010, accused Ramandeep moved an application for the grant of casual leave for 21.06.2010 vide Ex. PW25/A. After 25.06.2010, accused Ramandeep did not come to the School.

28. PW-26 Sh. Dev Raj is a formal witness. PW-27, HHC Hoshiar Singh testified that accused Vikasdeep produced the Car No. HP-39-3379, its key and the registration certificate before the Investigating Officer as per memo Ex. PW12/A. On 6.7.2010, MHC Vipin Kumar handed over the sealed parcels and the sample seals to him vide RC No. 163/2010. All the parcels, sample seals and envelopes were deposited by him in FSL, Junga.

29. PW-28 HC Dev Raj deposed that he has taken the dead body of Sarita to IGMCI on 28.6.2010. PW-29 HHC Dharam Pal has proved the call details of mobile No. 98161-63714 and 98050-33390 vide Ex. PW29/A and Ex. PW29/B.

30. PW 30 HHC Dharam Pal has taken the parcels to FSL, Junga as per the details given in RC No. 188/2010. PW-31, HC Prem Singh deposed that on 8.6.2010, ASI Gian Chand, Incharge Police Post, Pandoga has deposited with him the articles mentioned in his statement. Other articles were also deposited with him on 2.7.2010 by ASI Gian Chand. On 3.7.2010, SI/SHO Shakti Singh Pathania deposited the articles with him. On 6.8.2010 SI/SHO Shakti Singh Pathania deposited with him one Kassi with wooden handle. On 10.07.2010, SI/SHO Shakti Singh Pathania deposited with him one tractor bearing No. HP-36A-9305 blue coloured which he entered at Sr. No. 599/10 in the malkhana register.

31. PW-31 HC Prem Singh deposed that on 10.2.2011, vide DDR No. 12, he handed over one parcel containing danda which was duly sealed with seal impression "A" alongwith specimen seal "A" to ASI Prem Lal for obtaining opinion of Forensic Expert. On 12.2.2011, he deposited with him said parcel containing danda which was sealed with 7 seals of "DKG" alongwith specimen seals of "A" and "DKJ" qua which he made an entry in the malkhana register at Sr. No. 386.

He proved the copy of malkhana register Ex. PW31-A.

32. PW-32 HC Vipin deposed that during his absence, HC Prem Singh had been looking after his work. HC Prem Singh handed over to him the case property which had been deposited with him by the Investigating Officers, which were entered at Sr. Nos. 587, 589, 590 and 599 of the malkhana register. He sent the articles to FSL, Junga through HC Hoshier Singh No. 330 vide RC No. 163/10, dated 6.7.2010.

33. PW-33 Dr. Mukesh Sharma deposed that he alongwith Dr. S.K. Bansal and Dr. D.K. Shar went to conduct post mortem at the spot. Inquest report Ex. PW1/D was also annexed with the docket for conducting post mortem. The probable time which had elapsed between the death and post mortem was more than three days, however, final opinion was deferred till the receipt of Forensic Experts at IGMCM, Shimla.

34. PW-34 HC Vikram Singh is a formal witness. PW-35 ASI Prem Lal Sharma, deposed that on 04.09.2010, SHO, P.S. Haroli had given to him report of FSL and post mortem report for obtaining opinion of Forensic Science Expert from IGMCM, Shimla. Accordingly, he took the aforesaid two documents to Dr. Piyush Kapila at IGMCM on 03.09.2010 and produced the same before Dr. Kapila on 4.9.2010. Dr. Piyush Kapila gave his opinion on the basis of said documents and he handed over the same to SHO on return.

35. PW-36 Dr. Piyush Kapila deposed that he conducted the post mortem at 10:45 a.m. on 29.6.2010. The body was allegedly recovered from three and half feet deep buried sand filled Nallah. Gunny bag was lying besides the body in the coffin. The skin was blackened. First generation maggots were present near the natural orifices. He made following observations of head and neck:

"Head: Scalp hair as described 2 to 3 inches in length present in patches were easily pluckable. Eyes were found normal, sunken, sclera whitish, with no injuries on them. Blackish discolouration of the forehead was present. Nose was flattened but no fracture underneath was found. Upper lip had torn mucosa on apposing surface of upper incisors alongwith both central incisors fractured in round shape, recent. Mandible was fractured, ante mortem in between lateral incisor and canine of right side through and through with adherent clots of blood. The teeth were diagrammatically depicted in the post mortem report. A wound was present corresponding to the fracture mandible.

Neck: No ligature mark could be appreciated on the dead body. On dissection of the neck tissues, no underlying extravasation of the blood could be appreciated. All cervical vertebrae were intact and normal. On both arms no fresh injury could be appreciated; however nodular swellings were present on both humeri in lower one third, which could have been caused by old healed fractures. No significant finding was observed in head and intracranial contents but it is pertinent to mention here that due to decomposition the brain had liquefied to a grayish mass. In the ribs no recent fractures were found; however, nodularity was

present in midaxillary line on 6th, 7th, 8th, 9th on right side and rib No. 8 on left side. On right side ribs were thickened as above over the cerebral end. Lungs and heart were present but flabby and in a state of decomposition. Around 20 ml of digested food was present in the stomach without any congestion or peculiar smell. Liver, spleen and kidneys were flabby and genitals; however the swab was taken from vagina for biological examination. 39 photographs were taken by the digital camera duly written unedited on a compact disc (CD) and was handed over to police for the purpose of exhibition in the Court. The same CD is Ex. PW36/A."

According to him, in the presence of ante mortem fracture of mandible and teeth, the possibility of blunt trauma could not be ruled out, however the exact cause of death could not be ascertained in the background of moderate decomposition. The probable time which had elapsed between death and post mortem was opined to be around two weeks. He issued post mortem report Ex. PW36/B. He released the final opinion report after receipt of the chemical examination report vide Ex. PW36/G. On 11.02.2011, an application Ex. PW35/A was received in his office from Police Station, Haroli regarding the opinion as to the weapon of offence vis-?-vis injuries on the body. The weapon was examined by him. He stated that the injuries in Ex. PW36/B were possible with danda Ex. P-4.

36. PW-37 Davinder Verma has proved Ex. PW37/A, on the basis of a request through e-mail received from S.P., Una for supplying information of call details and name and address of the subscriber of mobile phone No. 98161-63714. He has also proved form Ex. PW37/B of mobile No. 98161-63714 of Bikram which was Ex. PW37/C and detail of tower location of mobile No. 98050-33390 and 98161-63714 Ex. PW37/E & E, respectively. He also proved the call details of mobile No. 9816163714 Ex. PW29/B and call detail of mobile No. 98050- 33390 Ex. PW37/F. According to him, at 1:53:17 hrs, the aforesaid mobile was in the tower range of Una (Jhalehra) and at 02:06:18 hrs, the same was at the range of Una (near DAV school). At 02:39:18 hrs, the same was at tower of Kasba VPO Basal and at 04:09:37 hrs, it was in the range of Ispur, Tehsil & District Una.

37. PW-41 Dr. Arun Sharma has proved report Ex. PW41/A. PW-42 SI Gian Chand has investigated the matter. He recorded the statement of Sardari Lal vide Ex. PW1/B under Section 154 Cr. P.C. The recoveries were effected, photographs were taken, the dead body was sent for post mortem examination to IGMCM and the weapon of offence was also taken into possession.

38. PW-43 SI Shakti Singh Pathania deposed that FIR Ex. PW43/A was registered. On 3.7.2010, accused Vikasdeep made a disclosure statement Ex. PW8/A in the presence of witnesses that he could get the danda and mattress recovered. Thereafter, accused Vikasdeep led the police to his house at Pandoga and on reaching there, he got recovered one mattress from a steel trunk kept in the upper storey of the house. Thereafter, he got recovered a danda from the kitchen garden of the house, which had been kept on the grass. These were duly

sealed and the demarcation report was obtained. On 10.07.2010, tractor No. HP-36-A-9305 was produced by Vikram to him at Police Station which was taken into possession vide memo Ex. PW-10/A. He has also taken into possession the copy of parivar register Ex. PW13/B. Kassi Ex. P6 was also recovered. The documents were obtained from the office of the Assistant Registrar, Co-operative Societies pertaining to the tour programme and leave record of accused Vikasdeep. The details of two Schools about the admission of the deceased were also taken into possession from the Schools.

39. DW-1 Sh. Ramesh Jaswal had deposed that the Secretary, Pandoga Cooperative Society sent a proposal for waiving of the loans worth Rs. 1,37,25,508/- vide Ex. DW1/A1 to Ex. DW-1/A19. The accused Vikasdeep after conducting the audit reduced this amount to Rs. 19,34,705/-. However, in his cross-examination, he has admitted that the file which he had brought starts from page No. 275. He also admitted that no date had been mentioned on any document proved by him.

40. DW-2 Sh. Susheel Pundeer had proved the reports Ex. DW2/A-1 and Ex. DW2/A-2. In his cross-examination, he had categorically admitted that he did not find any irregularity in the attendance register. DW-3 Sh. Sanjeev Kumar had merely proved challan Ex. DW3/B.

41. DW-4 Sh. Anil Kumar had proved MLCs. Ex. DW4/A-1 to Ex. DW4/A-4 and application of the police Ex. DW4/A-5. DW-5 Constable Ram Pal had proved logbook Ex. PW5/A and Ex. PW5/B.

42. Case of the prosecution, in a nut-shell, is that accused Neelam was posted in a School in village Kathyadi. Madam Babita (PW-7) was also posted in a School in Village Kathyadi. Neelam requested Babita to arrange a girl. Thereafter, Babita talked with the mother of the deceased. The custody of the deceased was handed over to Neelam. The deceased was brought to the village. The deceased went missing on 16.06.2010. PW-1 Sh. Sardari Lal was called by the accused Vikasdeep and Neelam Kumari. He was made to understand that his sister had gone missing. They went to various Police Stations, including Police Post, Sihunta and Police Station, Shahpur. However, the fact of the matter is that when the villagers raised hue and cry, an FIR was registered. The matter was investigated. Deceased Sarita was given beatings by accused Vikasdeep. Accused Neelam Kumari came from the school. Thereafter, the body was disposed of with active connivance of accused Navdeep, Ramandeep and Neelam Kumari. The body was packed in a gunny bag, which was taken on tractor from bridge. A pit was dug. The body was dumped in the same. It was got recovered by the accused from the pit. The body was sent for post mortem examination to IGMCI, Shimla. Post mortem examination was conducted by Dr. Piyush Kapila (PW-36). The post mortem report is Ex. PW36/B and the final report is Ex. PW36/G. According to PW-36 Piyush Kapila, the injuries could be caused with danda Ex. P-4. PW-1 Sh. Sardari Lal had testified the manner in which his sister Sarita was brought by accused Neelam Kumari to her house. Neelam telephoned Madam Babita. Madam

Babita handed over the telephone to him. Neelam had a talk with him and asked him to come to Shahpur. He was told by the accused that Kumari Sarita was lost at Shahpur. They went to Police Post, Sihunta. From Police Post, Sihunta, they were sent to Police Station, Shahpur. He made statement Ex. PW1/B before the Police at Pandoga. The body of Kumari Sarita was recovered from the Khad.

43. PW-17 Smt. Brahmo Devi deposed that she handed over the custody of her daughter to Neelam. Neelam had assured that she would be given education and she would also arrange for her marriage. It is apparent that Kumari Sarita was used as a domestic help by accused Vikasdeep and Neelam. PW-3 Smt. Bimla Devi had testified categorically that she heard the cries of child from the house of the accused. She also heard the noise of the shutter of the house of the accused. A car went towards the bridge with the head lights off. She denied the suggestion that they raised any loan from Pandoga Society. PW-3 Smt. Naresh Kumari saw the car on 16.06.2010 at about 1-1:30 a.m. coming from the side of bridge to the house of the accused. She had not seen Sarita after 16.06.2010. PW-4 Smt. Raksha Devi deposed that accused Vikasdeep was forcing Kumari Sarita to lift the blocks. She was unable to lift the block. Accused Vikasdeep had slapped and kicked Kumari Sarita in her presence as she was unable to lift the block. It is proved from the statement of PW-2 Smt. Bimla Devi, PW-3 Smt. Naresh Kumari and PW-4 Smt. Raksha Devi that the accused were maltreating the deceased. They have seen the car going out of the garage and coming back at odd hours. Accused Vikasdeep had made a disclosure statement vide Ex. PW5/A that he could get the place identified where the dead body was placed. PW-6 Sh. Santokh Singh deposed that accused Vikasdeep got the place identified where the body was kept. The accused have dug out the earth from the pit and the dead body was recovered from the pit. It was identified by her brother and a memo Ex. PW1/C was prepared to this effect. PW-7 Smt. Babita Kumari had deposed the manner in which Kumari Sarita Devi was brought by Neelam from the village. She testified that on 22.06.2010 at about 11:00-11:30 a.m., accused Neelam Kumari rang her up on mobile phone No. 94186-06935. She told her that she wanted to talk to Sh. Sardari Lal, the brother of deceased Sarita. She arranged to talk with accused Sardari Lal. Accused Vikasdeep also made a disclosure statement that he could get the danda and mattress recovered vide memo Ex. PW8/A. The recovery of danda and mattress was made in the presence of PW-9 Sh. Harbhajan Singh.

44. PW-10 Sh. Vikram Singh @ Vikku is the most material witness. According to him, he was approached by accused Vikasdeep to come to bridge with his tractor. He came to bridge with his tractor. He was told that some havan samagri was to be dumped. He drove the tractor alongwith spade (Kassi). Navdeep stayed back on the spot from where the tractor has started. However accused Ramandeep and Vikasdeep went on the tractor and they came back after 25 minutes. They were carrying a gunny bag. The accused had asked him to switch off the lights of the tractor. He also deposed the manner, he was asked to manage a driver to go to various places and they came back to Pandoga with the boy.

45. PW-11 Sh. Charan Singh deposed that accused Vikasdeep and Ramandeep have dug up the pit. When the dead body was taken out of the bag, one person was weeping. The car was taken into possession in the presence of PW-12 Sh. Man Singh vide memo Ex. PW12/A. PW-14 Sh. Vijay Singh has proved the memo Ex. PW14/A qua the blood stains found on the mat. PW-15 HC Harish Chander had proved that the mother of the deceased came to Government Medical College and Hospital, Tanda for DNA test. PW-22 Smt. Sudarshana Kumari has proved the casual leave application of accused Vikasdeep. PW-24 Smt. Saroj Kumari had deposed that on 22.06.2010, she was taking the class. Accused Neelam Kumari approached her and remarked that she had to go back to her house. The accused remarked that she would come to the School after some time. However, accused Neelam Kumari did not return to the School. PW-23 Sh. Sandeep Singh had driven the vehicle at the instance of Vikram @ Vikku.

46. The conduct of the accused was unusual. They had never told the brother of deceased PW-1 Sh. Sardari Lal about the death of Saroj Kumari. They were making him to understand that Sarita Kumari (deceased) had gone missing and she would be recovered. In fact, Sarita was killed by accused Vikasdeep and other accused had conspired in disposing of the body and disappearance of the material evidence. The recovery of danda and mattress had been duly proved. The car was also recovered. The place from where the dead body was recovered was identified by the accused. It has come in the statement of PW-36, Dr. Piyush Kapila that mandible was fractured, ante mortem in between lateral incisor and canine of right side through and through with adherent clots of blood. A wound was present corresponding to the fracture of mandible. According to his opinion, due to fracture of mandible injuries, the possibility of blunt trauma could not be ruled out. It proves the case of the prosecution that the deceased was beaten up with danda, which was recovered at the instance of accused Vikasdeep.

47. Mr. Atul Jhingan, learned counsel for the appellant in Cr. Appeal No. 4258 of 2013 has vehemently argued that his client was not present on the spot. But, it is apparent from the statement of PW-37 Davinder Verma that on the fateful date, the mobile was in the tower range in District Una.

48. Mr. Anup Chitkara, learned counsel for the appellants in Cr. Appeal No. 4256 of 2013 and Cr. Appeal No. 24 of 2014 has argued that there was no motive and it is a case of circumstantial evidence. It is settled law by now that if the prosecution has proved the case and the chain is complete, the motive is not relevant. In this case, the chain is complete. The prosecution has proved that accused Vikasdeep had murdered Sarita.

49. Learned counsel appearing on behalf of appellant Neelam Kumari has vehemently argued that she is not connected with the case. However, the fact of the matter is that as per the evidence brought on record, she had actively conspired with her husband by destroying the evidence.

50. PW-24 Smt. Saroj Kumari had deposed clearly that Neelam Kumari had

approached her on 22.6.2010 and remarked that she had to go back to her house and she would come to School after some time, however, she did not come. Neelam Kumari knew about the death of Saroj Kumari (deceased), but helped her husband to destroy the vital evidence and also mis-represented PW-1 Sh. Sardari Lal that his sister had only gone missing and she would be recovered soon, knowing fully that the girl was already dead.

51. Mr. Anup Chitkara, learned counsel for the appellants in Cr. Appeal No. 4256 of 2013 and Cr. Appeal No. 24 of 2014 has vehemently argued that the witnesses who have deposed against his clients were inimical, since his client Vikasdeep had refused to release loans in their favour, but it has come in evidence that none of the witnesses had ever applied for loan to Vikasdeep. The statements of neighbourers are natural and trustworthy. Accused Navdeep, Ramandeep and Neelam Kumari had conspired to destroy the evidence.

52. Their Lordships of the Hon"ble Supreme Court in Pawan Kumar Vs. State of Haryana, AIR 2001 SC 1324 : (2001) CriLJ 1679 : (2001) 2 Crimes 1 : (2001) 3 JT 475 : (2001) 2 SCALE 440 : (2001) 3 SCC 628 : (2001) 2 SCR 389 : (2001) 1 UJ 749 : (2001) AIRSCW 1111 : (2001) 2 Supreme 335 have held that some of the links in the chain of circumstances may be inferred from the proven facts. Their Lordships have held as under:

"2. Before advertng to the rival contentions, be it noted that the entire matter hinges on circumstantial evidence. There is also however existing on record, a dying declaration, but its effect on the matter, shall be discussed shortly hereafter in this judgment. Incidentally success of the prosecution on the basis of circumstantial evidence will however depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. While however, it is true that there should be no missing links, in the chain of events so as far as the prosecution is concerned, but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without however any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted and the law is well settled on this score, as such we need not dilate much in that regard excepting however, noting the observations of this Court in the case of State of U.P. Vs. Ashok Kumar Srivastava, AIR 1992 SC 840 : (1992) 1 Crimes 576 : (1992) 1 JT 340 : (1992) 1 SCALE 149 : (1992) 2 SCC 86 : (1992) 1 SCR 37 wherein this Court in paragraph 9 of the report observed:--

"The Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial

evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubts is reasonable and not otherwise..... "

3. The other aspect of the issue is that the evidence on record, ascribed to be circumstantial, ought to justify the inferences of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. The observations of this Court in the case of Balwinder Singh alias Dalbir Singh Vs. State of Punjab, AIR 1987 SC 350 : (1987) CriLJ 330 : (1986) 2 SCALE 900 : (1987) 1 SCC 1 lends concurrence to the above."

53. Their Lordships of the Hon"ble Supreme Court in Dhananjaya Reddy etc. Vs. State of Karnataka, (2001) 3 JT 395 : (2001) 2 SCALE 452 : (2001) 2 SCR 399 : (2001) AIRSCW 1217 : (2001) 2 Supreme 348 have held that in a case based upon circumstantial evidence, the prosecution is under a legal obligation to prove, firstly on facts the existence of such circumstances and secondly, that the circumstances form a complete chain which lead to the irresistible conclusion that the accused are guilty and such circumstances are inconsistent with their innocence. On proof of the aforesaid conditions, the Court can convict the accused of the charges framed against them. Their Lordships have held as under:

"40. In a case based upon circumstantial evidence, the prosecution is under a legal obligation to prove, firstly on facts the existence of such circumstances and secondly that the circumstances form a complete chain which lead to the irresistible conclusion that the accused are guilty and such circumstances are inconsistent with their innocence. On proof of the aforesaid conditions, the court can convict the accused of the charges framed against them. It is rightly said that witnesses may lie but the circumstances cannot."

54. Their Lordships of the Hon"ble Supreme Court in Ravinder Kumar and Another Vs. State of Punjab, AIR 2001 SC 3570 : (2001) CriLJ 4242 : (2001) 7 JT 377 : (2001) 6 SCALE 119 : (2001) 7 SCC 690 : (2001) AIRSCW 3366 : (2001) 6 Supreme 549 have held that it is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that the prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. Motive need not be established precisely. Their Lordships have held as under:

"18. The third contention is that the motive alleged by the prosecution was not established and hence the area remains gray as to what would have impelled them to liquidate the broker. No doubt it is the allegation of the prosecution that

appellants owed a sum of Rs. one lakh to the deceased and it might not have been possible for the prosecution to prove that aspect to the hilt. Nonetheless some materials were produced for showing that there were transactions between the appellants and the deceased and that they had some account to be settled. Only thus far could be established but not further. It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. In this connection we deem it useful to refer to the observations of this Court in *State of Himachal Pradesh Vs. Jeet Singh*, AIR 1999 SC 1293 : (1999) CriLJ 2025 : (1999) 2 Crimes 31 : (1999) 2 JT 99 : (1999) 2 SCALE 19 : (1999) 4 SCC 370 : (1999) 1 SCR 1033 : (1999) AIRSCW 982 : (1999) 3 Supreme 230 :

"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

19. An earlier decision of this Court in *Nathuni Yadav and others Vs. State of Bihar and another*, AIR 1997 SC 1808 : (1997) 1 JT 406 : (1997) 1 SCALE 56 : (1998) 9 SCC 238 : (1996) 10 SCR 905 Supp , which dealt with the same aspect, has been referred to therein and a passage therefrom has been extracted. We are, therefore, not persuaded to change the tide on account of the inability of the prosecution to prove the motive aspect to the hilt."

55. Their Lordships of the Hon"ble Supreme Court in *Vilas Pandurang Patil Vs. State of Maharashtra*, AIR 2004 SC 3562 : (2004) CriLJ 2870 : (2004) 1 DMC 815 : (2004) 5 SCALE 656 : (2004) 6 SCC 158 : (2004) 3 SCR 395 Supp : (2004) 2 UJ 1136 : (2004) AIRSCW 3441 : (2004) 4 Supreme 287 have held that Circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue, which taken together form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. It is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. Their Lordships have held as under:

"9. Before analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining

before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue which taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed."

56. Their Lordships of the Hon^{ble} Supreme Court in *Gagan Kanojia and Another Vs. State of Punjab*, (2006) 12 SCALE 479 : (2006) 9 SCR 413 Supp have held that the Court should use the yardstick of probability and appreciate the intrinsic value of the evidence brought on record and analyse and assess the same objectively. Their Lordships have held as under:

"9. The prosecution case is based on circumstantial evidence. Indisputably, charges can be proved on the basis of the circumstantial evidence, when direct evidence is not available. It is well-settled that in a case based on a circumstantial evidence, the prosecution must prove that within all human probabilities, the act must have been done by the accused. It is, however, necessary for the courts to remember that there is a long gap between "may be true" and "must be true". Prosecution case is required to be covered by leading cogent, believable and credible evidence. Whereas the court must raise a presumption that the accused is innocent and in the event two views are possible, one indicating to his guilt of the accused and the other to his innocence, the defence available to the accused should be accepted, but at the same time, the court must not reject the evidence of the prosecution, proceeding on the basis that they are false, not trustworthy, unreliable and made on flimsy grounds or only on the basis of surmises and conjectures. The prosecution case, thus, must be judged in its entirety having regard to the totality of the circumstances. The approach of the court should be an integrated one and not truncated or isolated. The court should use the yardstick of probability and appreciate the intrinsic value of the evidence brought on records and analyze and assess the same objectively."

57. Their Lordships of the Hon^{ble} Supreme Court in *Ujjagar Singh Vs. State of Punjab*, (2008) CriLJ 808 : (2008) 1 JT 1 : (2007) 14 SCALE 428 : (2007) 13 SCC 90 have held that while evaluating circumstantial evidence, whether a chain of evidence is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted. Their Lordships have held as under:

"12 We have considered their arguments very carefully. In *Mahmood Vs. State of U.P.*, AIR 1976 SC 69 : (1976) CriLJ 10 : (1976) 1 SCC 542 : (1976) SCC(Cri) 72 : (1975) 7 UJ 875 it has been observed that in a case dependent wholly on circumstantial evidence the court must be satisfied

(a) that the circumstances from which the inference of guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt;

(b) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and

(c) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.

In this case this Court held that the omission of the prosecution, inter-alia, to have the finger prints found on the alleged murder weapon was fatal to the prosecution story.

13. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, AIR 1984 SC 1622 : (1984) CriLJ 1738 : (1984) 2 SCALE 445 : (1984) 4 SCC 116 : (1985) 1 SCR 88 , this Court discussed the ratio of the judgments in *Hanumant Vs. The State of Madhya Pradesh*, AIR 1952 SC 343 : (1953) CriLJ 129 : (1952) 1 SCR 1091 , *Tufail (Alias) Simmi v. State of U.P.* (1969) 3 SCC 198 and *Ram Gopal Vs. State of Maharashtra*, AIR 1972 SC 656 : (1972) CriLJ 473 : (1972) 4 SCC 625 : (1972) 4 UJ 304 and *Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra*, AIR 1973 SC 2622 : (1973) CriLJ 1783 : (1973) 2 SCC 793 : (1973) SCC(Cri) 1033 : (1974) 1 SCR 489 and observed thus:

"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 v. State of Maharashtra* where the following observations were made : [SCC para 19,p.807 : SCC (cri) p.1047]

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" 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."

In the instant case, deceased Sarita was with the appellant-accused Vikasdeep. However, he has not given any explanation what has happened to her. He was bound to explain how the girl had disappeared. This fact was within his special knowledge. All the incriminating circumstances, discussed hereinabove, form a complete chain to prove the guilt of accused Vikasdeep.

58. Their Lordships of the Hon'ble Supreme Court in *Tulshiram Sahadu Suryawanshi and Another Vs. State of Maharashtra*, (2012) 9 JT 146 : (2012) 4 RCR(Criminal) 867 : (2012) 8 SCALE 684 : (2012) 10 SCC 373 have held that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as to the most probable position. The principles embodied in Section 106 of the Evidence Act can also be utilized. Where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the Court to draw a different inference. Their Lordships have held as under:

"23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such 15 Page 16 facts, failed to offer any explanation which might drive the Court to draw a different inference. It is useful to quote the following observation in *State of West Bengal Vs. Mir Mohammad Omar and Others etc.*, AIR 2000 SC 2988 : (2000) CriLJ 4047 : (2000) 9 JT 467 : (2000) 6 SCALE 148 : (2000) 8 SCC 382 : (2000) 2 SCR 712 Supp : (2000) AIRSCW 3230 : (2000) 6 Supreme 172 "38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In *Shambhu Nath Mehra v. State of Ajmer* the learned Judge has stated the legal

principle thus: "This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, 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. The word "especially" stresses that. It means facts that are pre-eminent or exceptionally within his knowledge."

59. Their Lordships of the Hon"ble Supreme Court in Arvindkumar Anupalal Poddar Vs. State of Maharashtra, (2012) CriLJ 4007 : (2012) 3 JCC 2055 : (2012) 7 JT 43 : (2012) 7 SCALE 1 : (2012) 11 SCC 172 have held that if a fact is especially in knowledge of any person, then burden of proving that fact is upon him. Their Lordships have held as under:

"14. We are in full agreement with the above conclusions of the High Court and we find no good grounds to interfere with the same. As rightly argued by learned counsel for the respondent the appellant did not dispute the identity of the body at any point of time, that he did not state anything in the course of 313 questioning about the running away of his wife and that there was no missing link in the chain of circumstances demonstrated before the Courts below. If according to the appellant the deceased ran away from the matrimonial home he should have established the said fact to the satisfaction of the Court as it was within his special knowledge. In this context it will be worthwhile to refer to the recent decision of this Court reported as Prithipal Singh etc. Vs. State of Punjab and Another etc., (2012) 1 JCC 254 : (2011) 4 RCR(Criminal) 791 : (2011) 12 SCALE 411(1) : (2012) 1 SCC 10 : (2012) 1 UJ 245 . In para 53, it has been held that a fact which is especially in the knowledge of any person then the burden of proving that fact is upon him and that it is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused."

60. Their Lordships of the Hon"ble Supreme Court in Babu @ Balasubramaniam and Another Vs. The State of Tamil Nadu, (2013) 7 AD 292 : (2013) CriLJ 3649 : (2013) 9 JT 148 : (2013) 3 RCR(Criminal) 736 : (2013) 8 SCALE 48 : (2013) 8 SCC 60 have held that when the incident is especially within the knowledge of accused, the burden of proof is on the accused. This circumstance would add up to other proved circumstances which substantiate prosecution case against the accused. Their Lordships have held as under:

"21. It is also pertinent to note that PW-5 Dr. Rajabalan stated that the injuries sustained by the deceased could have been caused 10 to 12 hours prior to the post-mortem. We have already stated that the post-mortem was conducted at 5.00 p.m. Thus, the death occurred around 6.00 a.m. The death occurred in the house where the deceased resided with A1-Babu. Presence of the accused at 6.00 a.m. in the house is natural. Besides, it is not contended by A1-Babu that he was not present in the house when the incident occurred. To this fact situation, Section 106 of the Evidence Act is attracted. As to how the deceased

received injuries to her head and how she died must be within the exclusive personal knowledge of A1-Babu. It was for him to explain how the death occurred. He has not given any plausible explanation for the death of the deceased in such suspicious circumstances in the house in which he resided with her and when he was admittedly present in the house at the material time. This circumstance must be kept in mind while dealing with this case. We are mindful of the fact that this would not relieve the prosecution of its burden of proving its case. But, it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference. In this case, in our opinion, the prosecution has succeeded in proving facts from which reasonable inference can be drawn that the death of the deceased was homicidal and A1-Babu was responsible for it. A1-Babu could have by virtue of his special knowledge regarding the said facts offered an explanation from which a different inference could have been drawn. Since he has not done so, this circumstance adds up to other circumstances which substantiate the prosecution case."

61. Their Lordships of the Hon"ble Supreme Court in *Ramesh Vithal Patil Vs. State of Karnataka and Others*, (2014) 8 JT 219 : (2014) 4 SCALE 438 have held that when facts are especially within the knowledge of the accused, the burden of proof lies on the accused. Their Lordships have held as under:

"21. There is also another angle to this case. The prosecution has succeeded in proving facts from which a reasonable inference can be drawn that the deceased committed suicide by jumping in the river along with her daughter. The deceased was in the custody of the appellant. She left the appellant's house with the small child. Admittedly, neither the appellant nor any member of his family lodged any missing complaint. The appellant straightway went to the house of the deceased to enquire about her. This conduct is strange. When his wife and small child had left the house and were not traceable the appellant was expected to move heaven and earth to trace them. As to when and why the deceased left the house and how she died in suspicious circumstances was within the special knowledge of the appellant. When the prosecution established facts from which reasonable inference can be drawn that the deceased committed suicide, the appellant should have, by virtue of his special knowledge regarding those facts, offered an explanation which might drive the court to draw a different inference. The burden of proving those facts was on the appellant as per Section 106 of the Evidence Act but the appellant has not discharged the same leading to an adverse inference being drawn against him (See: *Tulshiram Sahadu Suryawanshi & Anr. v. State of Maharashtra and Babu alias Balasubramaniam*)."

62. Their Lordships of the Hon"ble Supreme Court in *State of Rajasthan Vs. Thakur Singh*, (2014) AIRSCW 4479 : (2014) 8 JT 50 : (2014) 8 SCALE 82 have held that in a case of unnatural death of wife of accused in a room occupied only

by both of them, when there was no evidence of anybody else entering the room and the accused has not explained the circumstances about unnatural death of his wife, the principle under Section 106 of the Evidence Act, 1872 was clearly applicable. Their Lordships have held as under:

"15. We find that the High Court has not at all considered the provisions of Section 106 of the Evidence Act, 1872. This section provides, inter alia, that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him.

16. Way back in Shambu Nath Mehra Vs. The State of Ajmer, AIR 1956 SC 404 : (1956) CriLJ 794 : (1956) 1 SCR 199 this Court dealt with the interpretation of Section 106 of the Evidence Act and held that the section is not intended to shift the burden of proof (in respect of a crime) on the accused but to take care of a situation where a fact is known only to the accused and it is well nigh impossible or extremely difficult for the prosecution to prove that fact. It was said:

"11. This [Section 101] lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, 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.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not."

17. In a specific instance in Trimukh Maroti Kirkan Vs. State of Maharashtra, (2007) CLT 471 Supp : (2007) CriLJ 20 : (2006) 2 DMC 757 : (2006) 9 JT 50 : (2006) 10 SCALE 190 : (2006) 10 SCC 681 : (2006) 8 SCR 156 Supp : (2006) 148 STC 638 this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said:

"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."

18. Reliance was placed by this Court on Ganeshlal Vs. State of Maharashtra, (1992) CriLJ 1545 : (1992) 2 Crimes 161 : (1993) 1 DMC 326 : (1992) 2 JT

592 : (1992) 1 SCALE 811 : (1992) 3 SCC 106 : (1992) 2 SCR 502 in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A 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 was a prime accused in the commission of murder of his wife.

19. Similarly, in *Dnyaneshwar Vs. State of Maharashtra*, (2007) 1 DMC 732 : (2007) 5 SCALE 350 : (2007) 10 SCC 445 : (2007) 4 SCR 248 this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In *Jagdish Vs. State of Madhya Pradesh*, (2009) 9 SCC 495 this Court observed as follows:

"22. It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."

21. More recently, in *Gian Chand and Others Vs. State of Haryana*, AIR 2013 SC 3395 : (2013) CriLJ 4058 : (2013) 4 JCC 137 : (2013) 10 JT 515 : (2013) 3 RCR(Criminal) 916 : (2013) 9 SCALE 544 : (2013) 14 SCC 420 a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in *Shambhu Nath Mehra* was reiterated. One of the decisions cited in *State of West Bengal Vs. Mir Mohammad Omar and Others etc.*, AIR 2000 SC 2988 : (2000) CriLJ 4047 : (2000) 9 JT 467 : (2000) 6 SCALE 148 : (2000) 8 SCC 382 : (2000) 2 SCR 712 Supp : (2000) AIRSCW 3230 : (2000) 6 Supreme 172 which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act in the following words:

"35. During arguments we put a question to learned Senior Counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. Learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise."

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the

prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.

25. Learned counsel for Thakur Singh referred to Mahendra Pratap Singh Vs. State of Uttar Pradesh, (2009) 3 JT 120 : (2009) 3 SCALE 122 : (2009) 11 SCC 334 : (2009) 2 SCR 1033 to contend that where two views are possible, one held by the Trial Court for acquitting the accused and the other held by the High Court for convicting the accused, the rule of prudence should guide the High Court not to disturb the order of acquittal made by the Trial Court. This decision is not at all apposite.

26. In our opinion, the High Court has very cursorily dealt with the evidence on record and has upset a finding of guilt by the Trial Court in a situation where Thakur Singh failed to give any explanation whatsoever for the death of his wife by asphyxia in his room. Moreover, the very fact that all the relatives of Thakur Singh turned hostile clearly gives room for suspicion and an impression that there is much more to the case than meets the eye. Even the complainant, Himmat Singh who squarely blamed Thakur Singh (in the FIR) for the murder of his wife, turned hostile to the extent of denying his relationship with Thakur Singh.

27. The High Court expressed the view that since the prosecution did not produce Gotu Singh as its witness, its case ought to fail. In our opinion, Gotu Singh could not have added to the case of the prosecution. He had arrived on the fateful day after Thakur Singh had locked himself, Dhapu Kunwar and their child in their room. He did not even meet them on the fateful day and was oblivious of the events that had taken place that day. Therefore, producing him in the witness box would not have been of any consequence.

28. On a consideration of the facts of the case we are of the opinion that the approach arrived at by the Trial Court was the correct approach under the law and the High Court was completely in error in relying primarily on the fact that since most of the material prosecution witnesses (all of whom were relatives of Thakur Singh) had turned hostile, the prosecution was unable to prove its case. The position in law, particularly Section 106 of the Evidence Act was completely overlooked by the High Court making it arrive at a perverse conclusion in law.

Conclusion

29. The judgment and order passed by the High Court is set aside and that of the Trial Judge restored. The State should take the necessary steps to apprehend Thakur Singh so that he can serve out the sentence awarded to him by the Trial Court."

63. Accordingly, there is no merit in these appeals and the same are dismissed. The appellants/accused in Criminal Appeal No. 4256 of 2013, Criminal Appeal No. 4258 of 2013 and Criminal Appeal No. 4263 of 2013 are ordered to surrender before the learned Trial Court to undergo the sentences imposed upon them by the learned Trial Court within a period of three weeks from today.