

(2014) 02 GUJ CK 0115
In the Gujarat High Court
Case No : Criminal Appeal No. 2225 of 2008

Thakor Motibhai Keshabhai	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209 313
Evidence Act, 1872 — Section 103 106 114
Penal Code, 1860 (IPC) — Section 302 34 364 498-A

Citation : (2014) 02 GUJ CK 0115

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Yogendra Thakore, No. 1, for the Appellant; Chetana Shah,
Additional Public Prosecutor for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—This appeal is at the instance of a convict accused for the offences punishable U/Ss. 302 and 498-A of the Indian Penal Code and is directed against order of conviction and sentence dated 27/6/2008 passed by the Addl. Sessions Judge, Fast Track Court, Patna in Sessions Case No. 57/2007. By the aforesaid order, the learned Addl. Sessions Judge, found the appellant guilty of the offence punishable U/s. 302 of IPC and consequently sentenced him to suffer Life Imprisonment with fine of Rs. 5,00/-. In default of payment of fine, the appellant was directed to undergo further R.I. for one month. In the same manner, the learned Addl. Sessions Judge also found the appellant guilty of the offence punishable U/s. 498-A of the IPC and consequently sentenced him to suffer imprisonment for one year.

Case of the Prosecution:

1.1 The deceased named Gagiben was married to the accused and during the wedlock two children were born, a daughter, named Ranjan, aged 4 years and a son, named Mukesh, aged 1? years. The marital relations of the deceased with

the accused were strained as a result the accused used to frequently harass the deceased mentally as well as physically. On 6th April, 2007 at around 10 O'clock in the night the accused is alleged to have strangled the deceased to death in their house. It is the case of the prosecution that the accused, after strangulating his wife to death, concocted a story that his wife had sustained an electric shock while trying to insert wires in the electric socket for the purpose of switching on the TV in the house. The accused also tried to fabricate a false story that at the relevant point of time he was not there at the house, but had gone to a meeting which was convened in the village for the purpose of election of a Sarpanch. After the incident the accused informed his brother-in-law Andabhai Nagjibhai, P.W. 4 on telephone stating that his sister had died having sustained electric shock. On receiving such message, the father, brother and other relatives of the deceased reached Radhanpur Government Dispensary where they saw the dead body of the deceased with few external injuries including a ligature mark all around the neck. The father of the deceased Nagjibhai Thakor (P.W. 3) thereafter lodged a complaint (Exh. 51) at Sami Police Station about the incident on 7/4/2007.

1.2 On the strength of the First Information Report, Exh. 51, lodged by the father of the deceased, the investigation commenced. The inquest panchnama-Exh. 38 was drawn in the presence of the two panch witnesses. Thereafter the dead body of the deceased was sent to the Community Health Center at Radhanpur for the purpose of postmortem. The postmortem examination revealed that there were external injuries in the nature of abrasions and an incised wound on the face, including a chocolate-brown colour ligature mark encircling the whole neck at the level of the Hyoid Bone. The cause of death on completion of the postmortem was kept reserved. The viscera collected at the time of Postmortem was sent for chemical analysis and after the receipt of the report from the FSL, the final cause of death was assigned to be asphyxia due to strangulation. The viscera report ruled-out any traces of poison. The scene of offence Panchnama (Exh. 46) was drawn on 8/4/2007 in presence of the two panch witnesses. Along with the accused appellant, two other co-accused i.e. the brother of the accused-appellant and the father of the accused-appellant were also arrested and arraigned as accused in the crime.

1.3 The statements of various witnesses were recorded and at that point of time the whereabouts of the accused were not known. It is the case of the prosecution that on 30/4/2007 the accused was arrested and an arrest Panchnama was drawn in presence of the two panch witnesses.

2. On conclusion of the investigation, the Investigating Officer filed charge-sheet in the court of the learned Judicial Magistrate, First Class, Sami against the accused-appellant and the other two co-accused.

3. As the case was exclusively triable by the Sessions Court, the JMFC, Sami committed the case to the Sessions Court U/s. 209 of the Criminal Procedure Code. The Sessions Court framed the charge against the accused appellant and

the other co-accused being Exh. 18 and the statements of the accused persons were recorded. The accused persons did not admit the charge and claimed to be tried.

4. The prosecution adduced the following oral evidence in support of its case:

5. The following pieces of documentary evidence were adduced by the prosecution.

6. It appears that the accused persons also examined defence witnesses. The accused persons adduced the following oral evidence in support of its defence.

7. The following pieces of documentary evidence were adduced by the defence.

7.1 After completion of the oral as well as documentary evidence of the prosecution, the statement of the accused-appellant and the other two co-accused U/s. 313 of Cr.P.C. was recorded in which the accused stated that the complaint was a false one and they were innocent. The defence of the accused-appellant was that the deceased had died on account of electric shock sustained by her and the allegations of the prosecution that the deceased was strangled to death was false.

7.2 At the conclusion of the trial, the learned Trial Judge convicted the accused-appellant for the offences U/Ss. 302 and 498-A of IPC and sentenced him as stated herein before. However, the learned Trial Judge acquitted the other two co-accused i.e. the brother and the father of the accused-appellant for the offences U/Ss. 302 and 498-A r/w 114 IPC.

7.3 Being dissatisfied, the accused appellant has come-up with this Appeal.

8. Submissions on behalf of the accused-appellant:

8.1 Mr. Yogendra Thakore, the leaned Advocate appearing for the accused appellant, vehemently submitted that the trial judge committed a serious error in holding the accused guilty of the offence of murder punishable U/s. 302 of IPC as well as for the offence U/s. 498-A of the IPC. According to Mr. Thakore the entire case of the prosecution hinges on circumstantial evidence. Mr. Thakore submitted that in a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again, according to Mr. Thakore, those circumstances should be of a conclusive nature and tendency and they should be such as to include every hypothesis but the one proposed to be proved. In other words, according to Mr. Thakore, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all given probability the act must have been done by the accused. Mr. Thakore very strenuously submitted that none of the circumstances relied upon by the trial court could be termed as circumstances pointing only towards the guilt of the accused.

8.2 Mr. Thakore vehemently submitted that assuming for the moment that his client was unable to satisfactorily prove that the cause of death of the deceased was not asphyxia due to strangulation but was one on account of electric shock sustained in the house while trying to insert wires in the electric socket for the purpose of switching on the TV by itself would not be sufficient to hold the accused guilty for the offence of murder. Mr. Thakore submitted that the initial burden to prove the case against the accused beyond reasonable doubt rests on the prosecution and considering the nature of the evidence on record it could not be said that the prosecution has been able to prove the guilt of the accused beyond reasonable doubt. Mr. Thakore submitted that even if there are circumstances creating doubt as regards the complicity of his client in the crime by itself would not be sufficient to hold him guilty as it is a settled law that suspicion however strong, cannot take the place of proof.

8.3 Mr. Thakore laid much stress on the evidence led by the defence, oral as well as documentary, and submitted that there was no harassment to the deceased at the end of the accused appellant. Mr. Thakore submitted that the entire case of the prosecution that his client strangled the deceased to death in their house is unbelievable because at the relevant time their two children were sleeping in the house. Mr. Thakore also submitted that there is evidence on record to establish that at the time of the incident the accused was not at his house but was in a meeting which had been convened in the village in connection with an election.

In such circumstances referred to above, Mr. Thakore submitted that the accused is entitled to the benefit of doubt and deserves to be acquitted of all the charges.

9. Submissions on behalf of the State:

9.1 Ms. Chetna Shah, the learned Additional Public Prosecutor appearing for the State, vehemently submitted that the Trial Court has rightly convicted the accused for the offence of murder punishable U/s. 302 of IPC as well as for the offence punishable U/s. 498-A of IPC and no interference is warranted at the end of this Court in the present Appeal. Miss Shah vehemently submitted that if an offence takes place inside the house and that too in the night hours, then under such circumstances it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the Courts. According to Miss Shah there was motive for the commission of the crime and such motive is well established by the prosecution in the form of evidence of the father of the deceased, brother of the deceased and the sister-in-law of the deceased. According to Miss Shah there is evidence to suggest that the accused appellant was ill-treating his wife the deceased and the marital relations were also strained.

9.2 Ms. Shah laid much emphasis on the falsity of the defence. According to Miss Shah, the defence of the accused-appellant that the deceased died due to electric shock sustained by her in the house and not due to strangulation is

completely falsified by the medical evidence on record. Miss Shah submitted that the external injuries noted by the doctor at the time of postmortem examination, makes it abundantly clear that there was a ligature mark all around the neck suggestive of the fact that the deceased was strangled and died due to asphyxia. According to Miss Shah, the circumstance of the accused being not available to the police after the incident upto 30/4/2007 is also one of the circumstances pointing towards the guilt of the accused. The accused in his 313 statement has not explained as to why he was not available upto 30th April and where was he during the interregnum period.

In such circumstances referred to above Ms. Shah would submit that there being no merit in this appeal, the same be dismissed.

10. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our determination in this appeal is whether the learned trial judge committed any error in finding the accused appellant guilty of the offences punishable U/Ss. 302 and 498-A of the Indian Penal Code.

11. It is trite law that when the evidence against an accused person, particularly when he is charged with a grave offence like murder, if it consists of only circumstances and not direct oral evidence, it must be qualitatively such that on every reasonable hypothesis the conclusion must be that the accused is guilty; not fantastic possibilities nor freak inferences but rational deductions which reasonable minds make from the probative force of facts and circumstances. It is equally well settled that among the circumstances which go against the accused's innocence is the falsity of the plea that he puts forward.

12. In the present case we have noticed that right from the time of the incident the accused put forward the theory of the deceased having died due to electric shock sustained by her at the house in the night hours while trying to insert wires in the electric socket for the purpose of switching on the TV. Even the family members of the deceased were informed that the deceased had died due to electric shock. Therefore, we first propose to consider the medical evidence on record so as to satisfy ourselves whether there is any grain of truth in the defence of the accused. We are quite conscious of the fact that in a conviction appeal the appellate court should not start with the defence of the accused but should first consider whether the prosecution has been able to establish its case beyond reasonable doubt on its own legs. To that extent we are at one with Mr. Thakore appearing for the appellant-accused that neither the application of Sec. 103 nor of Sec., 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging towards general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction or, which makes-out a prima facie case that the question arises of considering facts of which the burden of proof may lie upon the accused.

13. Before we proceed to consider the medical evidence we deem it necessary to consider the circumstances which the prosecution has been able to bring on record.

i) The deceased was married to the accused and during the wedlock, a daughter and a son were born;

ii) The accused was residing independently in the house along with his wife the deceased and two children.

iii) The marital relations of the accused with his wife, the deceased, were strained as is evident from the evidence of the father, brother and the sister-in-law of the deceased.

iv) On the date of the incident, as reflected from the further statement of the accused recorded U/s. 313 of the Criminal Procedure Code, after returning from work he had dinner with his family and was at his house where the incident occurred.

v) According to the postmortem report, a ligature mark was found on the neck of the deceased with few abrasions on the face. The ligature mark was encircling the whole neck near the hyoid bone. The cause of death assigned by the panel of doctors was asphyxia due to strangulation, thereby ruling out any possibility of the deceased having sustained electric shock.

vi) The accused called up his brother-in-law i.e. the brother of the deceased and informed him that the deceased had died due to electric shock sustained by her while switching on the TV.

vii) The incident occurred on 6th April 2007 at around 9 o'clock in the night and the accused was arrested by the Police on 30/4/2007. During the interregnum period the whereabouts of the accused were not known.

viii) There is no evidence to even remotely suggest that any outsider had come to the house between 8.00 and 9.00 P.M.

14. The above takes us to consider the medical evidence on record.

14.1 The prosecution examined Dr. Vishwas Tyagi for the purpose of proving the PM report, Exh. 27. Dr. Tyagi in his evidence, Exh. 24, has deposed that on 7/4/2007 he was on duty as a Medical Officer at the Community Health Center, Radhanpur. At around 12.50 a.m. in the night a dead body of a lady was brought by some persons and he was told by those persons that the lady had died due to electric shock. He has further deposed that on 7/4/2007 the Police Officials of Radhanpur Police Station carried-out the inquest Panchnama of the dead body and the body was handed-over thereafter for the purpose of Postmortem. He has deposed that during the course of postmortem, he noticed the following injuries as mentioned in Column No. 17 of the P.M. Report, Exh. 27.

i) Abrased wound -- length 4 c.m. x width ? c.m. present over Right Zygomatic

arch.

ii) Incised wound -- Length 2 c.m. x width ? c.m. skin deep over Right pinna horizontally directed continuing with upper mentioned abraded wound.

iii) Ligature mark -- chocolate Brown coloured ligature mark 0.5 c.m. width present encircling the whole neck at the level of Hyoid Bone anteriorly, IIIrd cervical vertebra posteriorly and parallel to the mandibular rim partially.

He has further deposed that viscera was sent to the Forensic Science Laboratory, Ahmedabad for chemical analysis and till the arrival of the report of the viscera the cause of death to be assigned was kept pending. After receiving the chemical analysis report of the viscera the panel of doctors arrived at the conclusion that the cause of death of the deceased was asphyxia due to strangulation. He has further deposed that the chemical analysis report ruled-out the presence of any poison in the stomach.

14.2 In the cross-examination of this witness certain questions were put to establish that he had no knowledge of neurology. The line of cross-examination was that if any person sustains electric shock, then on account of a forceful jerk that person would fall down. This witness admitted that at the Radhanpur Government Dispensary there were no such facilities in the form of equipments to ascertain the effect of electric shock, if sustained any, by a person on his vital organ of the body. Nothing substantial could be elicited through the cross-examination of Dr. Tyagi on the basis of which it could be said that the deceased had actually died due to electric shock and not on account of strangulation. From the medical evidence on record, we have no hesitation in rejecting the theory propounded by the defence that the deceased had died due to electric shock. The medical evidence on record clearly suggests that there was a ligature mark chocolate brown in colour encircling the whole neck at the level of hyoid bone anteriorly of 0.5 c.m. width. One abrasion was detected of 4 c.m. x ? c.m. over right Zygomatic arch and an incised wound 2 c.m. x ? c.m. skin deep over right pinna horizontally directed continuing with the abrasion. It appears that the two injuries in the nature of abrasion and the incised wound might have been caused at the time when the deceased must have tried to resist the strangulation. By no stretch of imagination the theory of electric shock is consistent with the medical evidence on record.

15. Since we are discussing the medical evidence, we deem it necessary to consider the FSL Report of the examination of the electric board and the fuses collected by the investigating agency from the house of the accused. It appears from the FSL report Exh. 75 that in the electric board no short-circuit in the wiring was noticed. The only reference in the report is that--

The open switch, adjacent to the plug-holder of electric light board of Mark-A, which was noticed to be in "On" condition, by touching the metal strip of that portion or by keeping the phase-natal wire in the adjacent plug, can get shock.

Thus, even considering the report of the FSL so far as the examination of the fuse and the electric board is concerned, the same is not in consonance with the defence of the accused that the deceased died due to electric shock. In our opinion the electric shock has nothing to do with the ligature mark found on the entire neck of the deceased of 0.5 c.m. width. The theory of the electric shock has also nothing to do with the two external injuries noted by the doctor, one abrasion and the other incised wound, except the suggestion made to the doctor that on account of electric current if a person falls down from a bed then such injuries could be sustained by such a person.

16. The above takes us now to consider the oral evidence of the father of the deceased P.W. 3 Nagjibhai. Nagjibhai Thakore in his evidence Exh. 39 has deposed that the deceased was his daughter and was married to the accused. He has further deposed that the accused was earlier married with one another lady and had obtained divorce. During the wedlock of the first marriage, a son was born. The marriage with the deceased was the second marriage of the accused. Nagjibhai has also deposed that as and when the deceased used to come home, she used to complain about the ill-treatment meted towards her by her husband and the other two co-accused. He also deposed that the deceased used to also complain about sufficient food being not provided to her. As and when the deceased used to come at her parental home, the family members used to console her and send her back to her matrimonial home. In the cross-examination of this witness, except few suggestions nothing substantial could be elicited so as to render the evidence of this witness untrustworthy or doubtful in any manner. On the contrary, in the cross-examination this witness has deposed that when they reached Radhanpur dispensary the accused as well as the father of the accused were not to be seen. A suggestion was put to this witness which was denied that the accused had been falsely implicated so as to exert pressure on the family of the accused to arrive at a settlement in some other case. Most importantly no suggestion was put to this witness that there was no harassment to the deceased at the end of his husband, the accused.

17. On the same footing is the evidence of the P.W. 4 Andabhai, the brother of the deceased. The brother of the deceased Andabhai in his evidence Exh. 40 has deposed about the harassment which was meted towards his sister by the accused and his family members. Nothing substantial could be elicited through the cross-examination of this witness so as to render the evidence doubtful or unreliable in any manner. Except hurling few suggestions which were denied, there was no further cross-examination of this witness.

18. The evidence of the P.W. 5 Laxmiben Andabhai, the sister-in-law of the deceased, is also on the same footing and is quite consistent with the evidence of the P.W. 3 and P.W. 4.

19. We shall now look into the evidence of the defence witnesses examined by the accused.

Before discussing the same, it should be well remembered that it is one of the fundamental tenets of the criminal jurisprudence that the burden of proving the prosecution case squarely lies on the prosecution. This general burden never shifts. The defence is not bound to open its mouth so long as the prosecution does not discharge its general burden of proving its case beyond reasonable doubt. The defence version may even be false, because a falsely instituted prosecution may compel the accused to adopt a false defence. So, the prosecution cannot derive any advantage from the falsity or other infirmities of the defence version, so long as it does not discharge its initial burden of proving its case beyond all reasonable doubts.

20. We have discussed the entire evidence led by the prosecution, oral as well as documentary, and are of the view that the prosecution has been able to discharge its initial burden of proving its case beyond all reasonable doubts. However, since the accused has also thought fit to lead evidence oral as well as documentary on his behalf, we owe a duty to consider the same with a view to ascertain whether the case put forward by the defence is more probable than the case of the prosecution. We are also mindful of the fact that the appreciation of the evidence of the defence witnesses has to be on the same line with that of the prosecution witnesses.

21. The D.W. 1, Bhemabhai Karshanbhai Chavda in his evidence at Ex. 92 has deposed that he was one of the candidates for the post of Sarpanch of the village Panchayat. He has deposed that he was convening public meetings for the election campaign. On the date of the incident at around 9.30 in the night, they had all assembled at Thakorevas Chawk and were discussing regarding the election. He has deposed that at that point of time, the accused-appellant was also present along with other persons. At that point of time, some one came and informed the accused that something has happened at his house. He has deposed that he along with the accused and others reached at the house of the accused. He has deposed that he had not gone inside the house, but he heard through others that the wife of the accused had sustained electric shock and there was still some life left in her. Thereafter, an auto-rickshaw was called for and the wife of the accused was taken to Radhanpur Referral Hospital. He has further deposed that he had no knowledge about the incident.

22. In his cross-examination by the Public Prosecutor, he deposed that he was actually addressing the public and the people were listening to him. He has further deposed that others were also addressing the public. He has deposed that when he was actually addressing the public, he learnt about the incident and left the place so as to reach the house of the accused.

23. It appears that the accused wants to establish from the evidence of Bhemabhai, the D.W.-1 that on the date of the incident, he was in the meeting of Bhemabhai and no sooner had someone come and conveyed about the incident to him, than the meeting was stopped and all rushed to the house of the accused.

24. The accused has also examined Saviben Chamanbhai, the D.W. 2. This witness has deposed that all male members in the village had gone to attend the meeting of Bhemabhai Chavda, who was contesting the election for the post of Sarpanch and the females of the village were sitting at the temple. The deceased Gagiben was also present at the temple. Thereafter, Gagiben left the temple and returned to her house. This witness has deposed that she had no idea as to when the deceased left the temple. This witness has further deposed that Gagiben, after reaching home, while switching on the T.V., sustained electric shock. At that point of time, the father-in-law of this witness, who was sleeping in his house, which is adjacent to the house of the accused, heard a sound and learnt that something had happened. She has further deposed that at that point of time, father-in-law of the deceased came at the temple to call the female members and accordingly, all the females of the village reached the house of the deceased and found the deceased lying near the bed. She has deposed that thereafter, some one went and called for Motibhai, the accused. Thereafter, the accused and others who were in the meeting reached the house. At that point of time, the deceased was alive. Thereafter, the deceased was taken to the Radhanpur Hospital in an auto-rickshaw. She has also deposed that both the children of the deceased at the relevant point of time were sleeping in the house. In the cross-examination, of this witness by the Public Prosecutor, she deposed that it was true that she had no personal knowledge about the incident.

25. The accused also examined one Babubhai Devabhai, as the D.W. 3. This witness has deposed that he was residing in the neighborhood of the accused. There is a common wall between the house of the accused and the house of this witness. He has also deposed that as the accused had no electric connection in his house, he had drawn the electric connection from the house of this witness. He has deposed that the incident occurred between 9.30 and 10.00 in the night. He was in the meeting of Bhemabhai Chavda. When the meeting was in progress, there was lot of hue and cry and he heard that something had gone wrong at the house of the accused Motiji. What had happened was not witnessed by him. He has deposed that everyone was standing near the house of the accused and a rickshaw was called for and Gagiben, the deceased was taken to the Radhanpur Government Hospital. He has deposed that Gagiben had cordial relations with her husband, and there was no marital discord between the two. In his cross-examination, he denied that he had no personal knowledge about the incident. He also denied the suggestion that at the time of the incident, he was sleeping in his house and on hearing the commotion, he went to the house of Gagiben, the deceased.

26. The accused has also adduced documentary evidence to establish that he had no reason to commit the murder of his wife, by producing an invitation card of a function at the house of his elder brother, which was scheduled on 13th May, 2007. The daughter of the accused No. 2 (acquitted) was to get married on 13th May, 2007, and the invitation cards were also printed and according to the accused, when such a function was fixed, no person would commit such a crime.

The accused has also tried to highlight regarding a tatoo on the hand of the deceased, by which "GMT" was inscribed. Relying on such a tatoo, he has tried to establish that the deceased had love and affection towards him and was happily living with him.

27. We have considered the evidence led by the accused and are of the view that it does not help the accused in any manner in establishing his defence. The incident occurred in a small village. The venue of the public meeting, which was convened for the purpose of election was also not at a far of place, but was very much in the village. On perusal of the oral evidence of the defence witnesses, the accused has tried to establish that at the time of the incident he was not at his house and was at the meeting which was convened by the D.W. 1 Bhembabhai Chavda, as he was contesting the election to the post of Sarpanch. Except the D.W. 1 Bhembabhai Chavda, no other witness has stated that the accused was present in the meeting. It appears to us that the D.W. 1 Bhembabhai Chavda had also a vested interest in deposing in favour of the accused, as he was contesting the election and the accused was supporting him. It is also not clear from the evidence of the defence witnesses as to who was that person who had come and informed while the meeting was on that something had gone wrong at the house of the accused. Even if we assume for the moment that the accused was present in the public meeting by itself would not establish that he had not committed the crime. We are of the view that the prosecution has been able to establish the case against the accused beyond reasonable doubt. The incident occurred inside the house. We are unable to appreciate as to on what basis everyone in the village started talking about electric shock sustained by the deceased. It appears to be a well articulated plan of the accused to convince the people that his wife had sustained electric shock. When the very defence is found to be absolutely false, this falsity in the defence itself is a circumstance which goes against the accused. His explanation in the further statement recorded u/s 313 of the Criminal Procedure Code is also proved to be false.

28. In this context, we may quote below with profit the observations made by the Supreme Court in Udaipal Singh Vs. The State of U.P.,

In cases where only circumstantial evidence is available at the outset one considers the motive and the opportunity to commit the crime. If the evidence shows that the accused having a strong motive had the opportunity of committing the crime and the established circumstances on the record considered along with the explanation if any of the accused, exclude the reasonable possibility of any one else being the real culprit then the chain of evidence can be considered to be so complete as to show that within all human probability the crime must have been committed by the accused. He may be held guilty in such a case on such circumstantial evidence. If existence of strong motive is a circumstance against the accused, its absence is equally a circumstance in his favour. This is so stated by the Supreme Court in Rajinder Kumar and Another Vs. The State of Punjab,

29. The accused himself has led evidence to show that after returning from work, he had a hearty talk with his wife and after having dinner, he left the house to attend the public meeting which was convened for the purpose of election. It is evident from the evidence on record that the incident occurred in a very short span of time.

30. If an offence takes place inside the four walls of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in the circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if the strict principle of circumstantial evidence is insisted upon by the Courts.

31. Reference could be made to a decision of the Supreme Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra, reported in 2007 Criminal Law Journal, page 20, in which the Supreme Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. The Supreme Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

32. So far as the present case is concerned, we need to keep in mind Section 106 of the Evidence Act, which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

33. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by the Supreme Court in the case of State of West Bengal Vs. Mir Mohammad Omar and Others etc., . In the State of West Bengal (supra), the assailants forcibly dragged the deceased Mahesh from the house where he was taking shelter on account of the fear of the accused, and took him away at about 2.30 in the night. The next day in the morning, his mangled body was found lying in the hospital. The trial Court convicted the accused u/s 364, read with Section 34 of the Indian Penal Code, and sentenced them to ten years rigorous imprisonment. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for the charge of murder. The accused had not given any explanation as to what happened to Mahesh after he was abducted by them. The learned Sessions Judge, after referring to the law on circumstantial evidence, had observed that there is a missing link in the chain of evidence after the deceased was last seen together with the accused persons, and the discovery of the dead body in the hospital, and concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. The Supreme Court took note of the provisions of Section 106 of the Evidence Act, and laid down the following

principle in paragraphs 31 to 34 of the reports.

31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. 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 principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the court what else happened to Mahesh at least until he was in their custody.

34. Applying the aforesaid principle, the Supreme Court while maintaining the conviction u/s 364 read with Section 34 of the Indian Penal Code, reversed the order of acquittal u/s 302 read with Section 34 of the Indian Penal Code, and convicted the accused under the said provision and sentenced them to imprisonment for life.

35. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show, like in the present case, that shortly before the commission of the crime they were seen together or the offence took 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.

36. In *Nika Ram v. State of Himachal Pradesh* (supra), it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khokhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt.

37. In *Ganeshlal v. State of Maharashtra* (supra), the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement u/s 313 of the Criminal Procedure Code. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife.

38. In *State of U.P. Vs. Dr. Ravindra Prakash Mittal* (supra), the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him u/s 302 of the Indian Penal Code.

39. The circumstance of the accused absconding after the incident is also one of the circumstances pointing towards the guilt of the accused. We are conscious of the fact that the circumstance of abscondence by itself would not be sufficient to hold the accused guilty but if there are other circumstances pointing towards the guilt of the accused, then the fact that the accused was not available upto 30th April, 2007 is also going against him.

40. A great deal of argument was canvassed on behalf of the accused-appellant that the prosecution has not been able to establish the motive behind the commission of the offence. It was submitted by Mr. Thakore, the learned Advocate appearing for the accused-appellant that the only evidence adduced by the prosecution to show that the deceased was being harassed by the accused is in the form of the evidence of the father, brother and sister-in-law of the deceased. According to Mr. Thakore, they are all interested witnesses and since they lost their dear one, out of vengeance towards the accused, falsely deposed that the accused used to ill-treat the deceased. So far as the evidence of the father, brother and the sister-in-law of the deceased is concerned, we have already discussed and have reached to the conclusion that the same inspires

confidence and nothing substantial could be elicited through their cross-examination so as to discredit those witnesses so far as motive is concerned.

41. In this context, it will not be out of place to make reference to the observations made by the Supreme Court about "motive" in a case involving circumstantial evidence though in the context of inability of the prosecution establishing motive, in the case of Mulakh Raj, etc. Vs. Satish Kumar and others, wherein, in paragraph No. 17, it is observed as under:-

17. The question then is, who is the author of the murder? The contention of Sri Lalit is that the respondent had no motive and the High Court found as a fact that the evidence is not sufficient to establish motive. The case is based on circumstantial evidence and motive being absent, the prosecution failed to establish this important link in the chain of circumstances to connect the accused. We find no force in the contention. Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case

(Emphasis supplied)

42. It will also be useful to make a reference to the observations made by the Supreme Court regarding motive in a case involving murder of the wife by the husband, in the case of Miss Marie Andre Leclerc Vs. State (Delhi Administration) and Others, :-

..... In the first place it has been stated by P.W. 1 Kundan that relations between husband and wife were not cordial. In a case of murder of the wife by the husband there are many considerations which have to be looked into and it is very difficult to know the exact motive in the circumstances of a given case. For these reasons, therefore, we are satisfied that the prosecution has been able to prove the case beyond reasonable doubt. This is not a case in which it can be said that the view taken by the Sessions Judge is reasonably possible. The appeal is accordingly dismissed.

(Emphasis supplied)

43. We conclude by quoting the observations of the apex Court regarding the appreciation of circumstantial evidence in the case of State of U.P. Vs. Ashok Kumar Srivastava, as under:-

9. This 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 farfetched 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 doubt is reasonable and not otherwise

(Emphasis supplied)

In the overall view of the matter, we hold that the trial Court committed no error in convicting the accused for the offence of murder of his wife. We find no reason to interfere with the judgment of the trial Court. There being no merit in the appeal, the same is accordingly dismissed. The order of conviction and sentence imposed by the trial Court is hereby confirmed.