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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 06.03.2009

Judgment delivered on: 13.03.2009

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CRL.A. No.931/2004

DARSHANA

...Appellant

Through : Mr. Rajesh Mahajan, Advocate
versus

STATE

...Respondent

Through : Mr.Pawan Sharma, Advocate.

CRL.A. No.944/2004

RAJNI

..... Appellant

Through : Mr. Rajesh Mahajan, Advocate
versus

STATE

...Respondent

Through : Mr.Pawan Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. At 4:18 PM on 17.4.2002 Const.Geeta PW-16 recorded DD No.22, Ex.PW-4/A, at PS Uttam Nagar that a lady had been murdered at House No.147, Bhagwati Vihar. SI Kashmiri Lal PW-12 accompanied by Const. Rajesh Kumar PW-13, left for the spot. At the house they met Ms.Rajni, the sister

of the deceased (Raj) and her mother Darshana. SI Kashmiri Lal recorded the statement Ex.PW-12/A of Rajni and made an endorsement Ex.PW-12/B thereon, and dispatched the same, as recorded in the endorsement, at 6:45 PM for the registration of an FIR. At the police station, the duty constable HC Ombir Singh PW-18, recorded the FIR Ex.PW-18/A at 6:45 PM.

2. Needless to state, the FIR has been registered on the statement Ex.PW-12/A made by Rajni. It becomes important to note said statement in its totality. The translated version thereof reads as under:-

“Statement of Rajni, D/o Roop Lal, R/o V Block, House No.147, Bhagwati Vihar, Uttam Nagar, New Delhi aged 18 years.

(1) I reside with my family at the aforementioned address and am pursuing B.A first year non-collegiate course from Maitreyi College. (2) On Sunday 14.4.2002, my father Roop Lal went to Punjab to attend a wedding and I along with my mother and my elder sister Raj stayed back at home. (3) My sister Raj used to sleep in the room adjoining the Gali; my mother and myself used to sleep in the inner room and my father used to sleep in the T.V. room. (4) Last night, my sister and myself watched television till 11.00 P.M, thereafter my sister slept in her room and I slept with my mother in the inner room. (5) My mother and myself got up around 8-8.15 A.M in the morning. (6) We had observed fast on Navratra and both of us took a bath. (7) My sister had also observed fast on Navratra and my mother told me to wake her up so that she could also take a bath. (8) First my mother knocked at the door. (9) There was no response when my mother knocked at the door. There was no

response even when I knocked the door thereafter. (10) Thereafter, we peeped from the mesh door but could not see my sister on the bed, my mother said that she might be sleeping on the sofa. (11) After sometime my mother said that Raj should get up. (12) When we peeped through the mesh door my mother found the room a little lighted. (13) I and my mother went outside the house and saw the room adjoining the Gali bolted from outside. (14) When we opened the door we saw my sister Raj lying in a pool of blood between the sofa and the table. (15) I and my mother went inside the room; we both got scared. (16) My mother bolted the door adjoining the Gali from inside. (17) Then both of us went out from the other door and bolted the said door from outside; the way it was earlier. (18) Thereafter I went to the PCO Booth to contact Seema a friend of my sister Raj and my maternal uncle but was unable to contact them. (19) Thereafter I went to Seema's house and informed her that Raj had done something to herself. (20) Seema came with me to my house and saw my sister Raj and she left after sometime saying that she had an exam. (21) Thereafter I waited for my maternal uncle whom I had already telephoned. (22) At around 1.30-2.00 in the afternoon, Kaley Mama came to our house. (23) We could not think what to do. (24) Finally my maternal uncle decided to telephone the police and around 4.15 PM we dialed the number 100. (25) I have once again seen the dead body of my sister, which bears many stab wounds. (26) Someone has killed my sister, investigations should be conducted."

3. We have broken the statement of Rajni into different parts for facility of subsequent reference, inasmuch as, the decision in the instant case centers heavily on the conduct of Rajni and her mother Darshana who are the accused persons, charged with the offence of having murdered Raj.

4. Rameshwar Khatri PW-19, the SHO of the police station reached the place of the occurrence at around 5:15 PM. Ravinder Singh PW-21 a photographer was summoned who took 8 photographs Ex.PW-21/1 to Ex.PW-21/8; negatives whereof are Ex.PW-21/9 to Ex.PW-21/18. Const.Kabul Singh PW-17 was summoned by the SHO to the spot. SI Kashmiri Lal PW-12 prepared the rough site plan Ex.PW-12/DA of the house and the place of occurrence. The crime team were summoned but failed to lift any chance finger prints from the spot. The dead body was seized and sent for post-mortem to DDU Hospital where Dr.Manoj Nagpal PW-1 conducted the post-mortem on 18.4.2002 and as per report Ex.PW-1/A noted the following injuries on the body of Raj:-

"External Injuries

1. Seven stab wounds covering an area of 16 x 15 cm with uneven margins varying incise from 0.5 x 0.3 to 0.9 x 0.4 cms and all were muscle deep.
2. Rt. breast had 3 incised wounds skin deep (a) 7 cm below Rt. nipple measuring 1.7 x 1 cm (b) 6 cm medial to Rt. nipple 1.7 x 1 cm (c) 6 cm above Rt. nipple 1.7 x 1.3 cm.
3. Incised wound Lt. forearm 11.5 cm below Lt. elbow 1.7 cm x 0.5 cm skin deep.
4. 3.7 cm medial to injury No.3 is present with clear cut margins, incised wound 1.7 x 1 cm
5. 7 cm below posterior axillary fold on Lt. side is present incised wound of 2 x 1 cm
6. Incised wound 11.5 cm below Rt. elbow anterior aspect 1 x 0.8 cm

7. Incised wound 6 cm medial to injury no.(12) 3 x 1 cm skin deep
8. 1 cm above injury No.(1) is present a incised wound 1.75 x 0.7 cm on Rt. side
9. Incised wound Rt. hand dorsum in the 3rd web space 3 x 1 cm
10. Incised wound Rt. palm 3.5 x 1 cm with clear cut margin skin deep
11. Skin deep incised wound 1.5 x 5 cms Rt. hypochondrium 1.5 x 1 cm
12. 6.6 cms lateral to injury No.(11) is present skin deep incised 2.5 x 1 cm
13. Incised skin deep wound on lateral aspect of left thigh 14 cms below anterior superior iliac spine 2.2 x 1.5 cm
14. 1 cm behind injury No.13 is present an incised wound 2 x 1 cm
15. Incised wound 6.5 cm above Lt. knee 1.4 x 0.6 cm
16. Incised wound above umbilicus 2 x 0.8 cm skin deep
17. Incised wound on symphysis pubics midline 1.5 x 1 cm
18. 4 cm left to injury No.17 1.8 x 0.6 cm incised wounds.
19. Incised wound 8 cm Rt. thigh 2 x 1 cm
20. 4 cm lateral to injury No.19 incised wound 2 x 1 cm.
21. 2 incised wounds on lateral aspect of Rt. thigh 14 cms above Rt. knee measuring 1.8 x 0.8 cms and 1.5 x 0.5 cm
22. Incised wound medial aspect of Rt. knee 1.5 x 1 cm
23. Incised wound 2 cm below Rt. knee 3 x 1.4 cm
24. Incised wound lateral aspect of Rt. leg 8.5 cm above lateral mallous 2.6 cm x 0.5 cms.
25. 4 cms above injury No.(24) 2 x 0.6 cm incised wound.
26. 4.5 cm lateral to injury no.(25) incised wound 1.5 x 1 cm
27. Rt. foot dorsum 3 cm from Rt. lateral mallous 2.5 x 0.5 cm incised wound.
28. Incised wound at Illrd web space, right foot dorsum 3.5 x 0.5 cm muscle deep.
29. 8 penetrating wounds Lt. breast with clear cut margins covering an area of 16 x 10 cms all the injuries vary in size from 1.5 x 0.5 cm to 1.8 x 0.8 cms, cavity deep

30. Two penetrating wounds on Rt. breast obliquely vertical sharp edges, cavity deep 1.8 cm x 1 cm and 1.7 x 1 cm
 31. Penetrating wound Lt. Hypochondrium 1 cm below Lt. inter costal margin 8 cm from midline 1.7 x 1 cm cavity deep
 32. 3 cm below injury No.31 is present a penetrating injury 1.5 x 0.8 cm cavity deep
 33. Stab wound with clear cut margin Lt. thigh 6 cm above knee measuring 1.8 x 1 cm; muscle deep
 34. Medial aspect of Lt. knee stab wound 1.7 x 1.2 cm muscle deep;
 35. Penetrating wound on Rt. side of abdomen 7.5 cm below costal margins and 6 cms from anterior midline. 1.8 x 1 cm cavity deep."
5. He recorded that the plural cavity was filled with blood. Both lungs were penetrated at three places on the left side and at one place on the right side. The abdominal cavity was full of blood. The uterus showed product of conception. He opined that the cause of death was haemorrhagic shock.
6. The appellants were arrested from their house on 22.4.2002 by Rameshwar Khatri PW-19, the SHO of the police station. Kashmiri Lal PW-12 was also present with the SHO when the appellants were arrested. They were interrogated and their statements Ex.PW-11/E (Darshana's statement) and Ex.PW-11/F (Rajni's statement) were recorded as per which both confessed having jointly committed the crime using a knife by Darshana and a screw driver by Rajni. Both disclosed that they could get

the same recovered. Thereafter, a knife Ex.P-1 was recovered at the pointing out of Darshana and a screw driver Ex.P-4 was recovered at the pointing out of Rajni. The knife was seized vide seizure memo Ex.PW-11/H and the screw driver was seized vide seizure memo Ex.PW-11/J. The sketch Ex.PW-11/C of the knife was prepared. The sketch Ex.PW-11/M of the screw driver was prepared.

7. We eschew reference to the recovery of the clothes got recovered by Darshana and Rajni which they claimed they were wearing when they murdered Raj because both of them had disclosed that they had washed the clothes and hence no blood group could be detected on the clothes as per the report Ex.P-A.
8. We do not blame the police for interrogating Rajni and Darshana after 6 days of the incident, because after all, they were the sister and mother respectively of the deceased and adopting a human approach, howsoever suspicious their conduct was, the family was given time to conduct not only the last rites but other religious ceremonies. Unfortunately, the time lag resulted in some vital evidence being lost. Had the recoveries been effected on the day of the incident, relevant and contemporaneous evidence would have been brought on record.

9. On 27.4.2002, Tirath Raj Singh PW-7, a draftman went to the site at the instance of Insp. Rameshwar Khatri PW-19 and prepared the site plan to scale Ex.PW-7/A. The scale on the site plan is 1 inch equivalent to 5 feet.
10. Being relevant for the purposes of appreciation of evidence it becomes important to state the pen profile of the site plan Ex.PW-7/A. It shows the ground floor of House No.147, Bhagwati Vihar, the residence of the appellants and the deceased, where the deceased was murdered. The house abuts a street on the northern boundary of the plot. The plot can conveniently be divided into two portions. The western and the eastern portion. The entrance from the road is into the porch which is on the western portion of the plot. Immediately on entering the porch is the stair case leading to the first floor and above. Next to the stair case, abutting the western boundary, is a bath and adjoining thereto is the kitchen. The entire remaining space of the western half portion of the plot till the kitchen forms the porch. The rear half portion of the said half portion of the plot has a room of dimension 9'8" x 8'4". The entrance to this room is from a door which opens on to the porch. The other half of the plot towards the eastern side has a room 11'6" x 10'6", followed by

another room at the rear having dimensions 11'9" x 8'2". The first room on the eastern side of the plot has 3 doors. The first door opens on to the street and is in the corner of the room just adjacent to the partition wall which separates the room from the porch. The second door is on the same wall at the junction of the wall with the internal wall partitioning the rooms on the eastern side of the plot. It opens on to the porch. The third door forms the shape 'L', with the second door i.e. is the common door between the two rooms on the eastern side of the plot. The second room on the eastern half segment of the plot has a door which opens on to the porch. It is immediately next to the second door of the room in the front and forms an inverted 'L' with the third door of the front room.

11. It is apparent that the room at the rear on the eastern half segment of the plot shares a common door with the room in the front.
12. The site plan indicates position of a bed on the room abutting the street on the eastern half segment of the plot. The bed is opposite door No.2. It is a double bed, evidenced by its dimensions which shows that a little in excess of one quarter of the said room is occupied by the bed. The bed is placed next to the wall opposite door No.2 i.e. the eastern wall of the room. A sofa is shown

perpendicular to door No.1 in the said room. Opposite to the sofa and adjoining the bed, is a table placed at the 1/4th segment space of the room towards the eastern wall, with the remaining 1/4th space i.e. the space between the table and the wall having two setties placed thereon. The place where the dead body of Raj was found is the space between the sofa and the table aforementioned. The body is shown lying at an angle with the head towards the table and the legs towards the sofa.

13. The photographs Ex.PW-21/1 to Ex.PW-21/8 throw more light of the room where the dead body of Raj was lying. The dead body is lying with face upwards and both arms stretched out till the elbow and thereafter bent. The right arm above the elbow i.e. the right forearm, is forming a right angle at the elbow with the hand pointing upward towards the table. The left arm stretches outward nearly perpendicular to the chest with the forearm portion at the elbow pointing inwards towards the left side of the chest. The out stretched right arm is at a distance of about 1½ feet from the wall. Thus, the out stretched left arm of the deceased is about 4 feet away from the northern wall of the room.
14. Each door in the house has a width of 2½ feet except the door of the room opening on to the street where the dead

body of Raj was found which has a lesser width. We add a clarificatory note, that the width of the doors has not been mentioned in the site plan, but with reference to the legend pertaining to the equivalent scale recorded in the site plan, which shows that 1 inch represents 5 feet, the width of the doors can be inferred.

15. We have troubled the reader with what might appear to be a verbose description of the site plan of the house as also the site plan of the room where the body of Raj was found by the police. The reason thereof is, as would be evident from the discussion of the rival contentions, something turns on the site plan and the place where body of Raj was lying.
16. From a description of the room and the place where the body of Raj was found, it is but apparent that the out stretched left arm of Raj is at least 4 feet away from the northern wall of the room i.e. is at a distance of about 7 feet from the partition wall of the said room and the room at the rear. (This can even otherwise be visualized on seeing the photographs Ex.PW-21/1 to Ex.PW-21/8). Thus, from the door No.2 of the room in which the dead body of Raj was found, the position of the left forearm of Raj would be at a distance of about 4½ feet away from the straight line, if drawn, from the left side of the door. It has to be

noted, that with reference to door No.2, the body would be lying somewhere at the midline (if drawn) of the room, approximately bisecting the midline in the ratio 1:3.

17. As noted above, in her statement Ex.PW-12/A, Rajni had told the police (refer statements 13, 14, 15, 16 and 17 of Ex.PW-12/A noted in para 2 above) that when she and her mother went outside the house and saw the room adjoining the gali bolted from outside they opened the door and went inside the room and her mother bolted the door from inside and both went outside from the other door and bolted the said door from outside the way it was earlier. Thus, when the police arrived at the scene of the crime, obviously there was no sign or evidence of a forced entry into the house.
18. The post-mortem report of the deceased evidenced that she was carrying a pregnancy. The deceased was unmarried. The mother and the sister of the deceased were suspects. The injuries as recorded in the post-mortem report show that virtually on every part of the body, blows have been inflicted with a sharp edged weapon and a blunt piercing object. Some of the injuries i.e. on the hand and the forearms are suggestive of the resistance offered by the deceased. The injuries 16 and 17 indicate that the attack was on the womb. Injuries on the

thighs are also suggestive of the womb being the target. A motive for the crime in the mind of the mother and the sister of the deceased does emerge. The unwanted pregnancy of an unmarried girl, in a conservative Indian society is bound to affect the family honour. The taint is brought on the family as a whole. The younger unmarried sister of the deceased may possibly suffer social ostracism; so may have thought the mother and the sister. Thus, it became necessary to investigate whether such a motive could be attributed to the mother and the sister of the deceased i.e. whether they were aware that the deceased was pregnant.

19. Dr.Sudesh Gupta PW-3 informed the police, as per his statement recorded by the police under Section 161 Cr.P.C., that on 3.4.2002 a patient named Raj had approached him with a complaint of pain in the abdomen. He prescribed medicines and advised an ultrasound. Dr.Rakesh Mahajan PW-2 a consultant with Mahajan Charitable Hospital & Nursing Home informed the police that on 5.4.2002 he had seen an ultrasound of the patient whose name was Raj and as per his report Ex.PW-2/A, given to Raj, he had recorded his opinion on perusing the ultrasound report that Raj was pregnant by 19 weeks and

it was not possible to medically terminate the pregnancy.

The investigating officer seized the report Ex.PW-2/A.

20. Relevant would it be to note that when the appellants were examined with respect to the incriminating evidence against them i.e. when their statements were recorded under Section 313 Cr.P.C. both admitted that they were aware of the report Ex.PW-2/A and that they were aware of the pregnancy of Raj but stated that it was incorrect that the pregnancy could not be medically terminated.
21. At the trial, Dr.Sudesh Gupta PW-3 and Dr. Rakesh Mahajan PW-2, deposed about the pregnancy of Raj. PW-2 proved his report Ex.PW-2/A which recorded that the pregnancy being of 19 weeks and it was not possible to medically terminate the pregnancy.
22. Seema, the girl referred to by Rajni in her statement Ex.PW-12/A, a friend of the deceased Raj, was examined as PW-5 and deposed that in the morning hours of 17.4.2002, Rajni, her classmate, came to her and she accompanied Rajni to her house because she was told that Raj had done something to herself. That Raj was her classmate. When she reached the house at 9:15 AM she saw Raj lying dead in the room which was adjacent to the street and blood in plenty was spilt in the room. That she became perturbed on seeing the body. Darshana, mother of Rajni was

present in the house. She told them to inform the police. They told her that they had informed their relations about the incident. She came back to her house.

23. Relevant would it be to note that Seema was not cross examined on any aspect of her testimony in examination in chief save and except a suggestion given to her that she was deposing falsely. In cross examination she was questioned with reference to her brother Satish knowing Raj. She was questioned whether her brother had an account at the Uttam Nagar Branch of Canara Bank and whether even Raj had an account in said branch for which Raj had introduced Satish to facilitate the account to be opened. She was questioned with reference to whether Satish and Raj had friendly relationship.
24. Jaipal PW-24, a tenant on the first floor deposed that he was a tenant in a room on the first floor in the house of accused Darshana and Roop Lal. That Rajni was the daughter of Darshana. Raj was the elder daughter of Darshana and Roop Lal. That all three rooms on the ground floor were occupied by the landlord. That he was employed in a factory at Uttam Nagar. On 16.4.2002 he returned at 10:30 PM and the main entrance was locked. He knocked. Raj opened the door and he went upstairs and after taking dinner at about 11:30 PM went to bed.

That he woke up at 5:30 AM in the morning and after answering the call of nature, lifted a can, and went down to fetch water. When he alighted only 2-3, steps he saw Darshana coming out of her room. She handed over the keys of the lock put on the main gate. He opened the lock and gave the same to Darshana. He went to fetch water. That he returned after 3/4 or 1 hour. He knocked the main gate. Accused Darshana opened the gate. He went upstairs. He took a bath followed by a breakfast and along with his tiffin left for his factory at 8:45 AM. That when he was leaving for duty, the main gate was open. That around 12 or 12:15 PM, Rajni gave a call at his factory. She was weeping on the phone. She requested him to return home saying that she will let me know about the facts when he returned home. She disconnected the line. On account of her behaviour he got perturbed. His employer came to the factory at around 1:00 or 1:15 PM. He told the facts to his employer and left for home. On reaching home he saw the main gate open. He saw Darshana and Rajni sitting in the front room almost in semi-unconscious state. He enquired from Darshana as to what the matter was. She replied that Raj had not woke up by then (these are the words of the witness). At his instance, they accompanied him to the room of Raj and

when the door was opened he saw the dead body of Raj. He became perplexed and Darshana caught him to support him and brought him outside. Darshana gave him water to drink. He enquired from Darshana as to how this has happened. Darshana said that she was not aware. After about 5-10 minutes the brother and sister-in-law of Darshana reached there. He enquired whether they had informed the police. Darshana told him that when Rajni's father would come back he would take steps to inform the police. A gentleman residing nearby reached. He discussed with him that in case the police would not be informed even they may get entangled in the matter. Somebody informed the police.

25. Relevant would it be to note that while cross examining the witness, no suggestions were put to him nor was he cross examined with respect to his deposition about the conduct of the accused persons and his having seen Darshana in the morning at 5:00 AM and later on after about an hour. He was cross examined on the point that being a defaulter he was evicted from the tenanted premises. A suggestion was given to him that Darshana was sleeping on the terrace of the building, to which he replied that he was not aware of said fact. He disclosed during cross examination that when he interacted with

Darshana in the morning no dialogue took place between them. He admitted that a boy named Mohan also lived as a tenant in the said house. He denied that he had deposed falsely.

26. Roop Lal PW-6, the father of the deceased deposed that he had gone to Punjab for some work on 14.4.2002 and had returned at about 6:30 PM on the day of the incident.
27. The police officers associated with the investigation were examined. For the reasons noted hereinabove in para 7 of our decision we do not refer to the recoveries effected nor do we refer to the evidence pertaining to the recovery of the knife and the screw driver, the alleged weapons of offence for the reason the malkhana register Ex.PW-14/C and the application Ex.PW-1/B made by Inspector Khatri to the doctor whose opinion was sought whether the injuries could be caused by the knife and the screw driver in question and the report Ex.PW-1/E makes it clear that the knife and the screw driver were obtained by Inspector Khatri from the moharar malkhana on 27.4.2002 and were placed in the hands of the doctor for his opinion on 24.5.2002. There is no evidence that for these 28 days, the seal which was affixed on 22.4.2002 when the two objects were seized by the police was intact.

28. We note that when the appellants were examined under Section 313 Cr.P.C. both admitted that they were residing on the ground floor of House No.D-147, Bhagwati Vihar and that on 16.4.2002 Raj was hale and hearty and had gone to bed in the night. Both admitted that on 3rd and 4th April 2002 Raj went to a doctor and that on 5.4.2002 she had undergone an ultrasound test and that the report Ex.PW-2/A was given in that regard. They also admitted that as on 5.4.2002 Raj was pregnant by 19 weeks and that on 4.4.2002 Roop Lal had gone to Punjab and had returned back at 6:45 PM on 17.4.2002. They admitted that in the intervening night of 16th and 17th April 2002 they were present in the house along with Raj. They admitted that Jaipal PW-24 was a tenant in the same building. All other incriminating circumstances put to them were denied by them.
29. At this stage, we may note that pertaining to the testimony of PW-24 of his having received a telephone call from Rajni at around 12:00 noon and pertaining to his testimony of the conduct of the appellants when he returned to the house after 1:45 PM, no questions have been put to the appellant. Indeed, as urged by Mr.Rajesh Mahajan, learned counsel for the appellants, we would have to exclude incriminating circumstance pertaining to the conduct of

the appellants relatable to the testimony of PW-24 regarding the facts deposed by him of having received a telephone call from Rajni and how the accused persons behaved when he visited their house.

30. To put it very briefly, the learned Trial Judge has held that there was a motive for the appellants to kill the deceased. That there is no evidence of a forced entry in the house. That the appellants and the deceased were seen together in the house, a fact admitted by the appellants, in the intervening night of 16th and 17th April, 2002. That the deceased was found dead in her house, which had no signs of a forced entry, the next morning. That the conduct of the appellants was suspicious. That the police was informed at 4:15 PM deliberately to buy time to think of a plausible story. That the post-mortem report evidenced use of two weapons; one, with which the incised wounds were inflicted, the other with which the seven stab wounds noted at serial No.1 of the post-mortem report were inflicted, which were blunt piercing injuries and were obviously the result of repeated stabbing with a blunt object capable of piercing. The knife and the screw driver recovered pursuant to the disclosure statement of appellant Darshana and appellant Rajni respectively could be the weapons of offence. According to the learned Trial

Judge, the evidence formed a chain complete by itself wherefrom an inference of guilt of the appellants could be inferred and their innocence ruled out.

31. At the hearing of the appeals, Sh. Rajesh Mahajan, learned counsel for the appellants, with his usual forensic arguments impressed upon us, that a perusal of the impugned decision dated 17.8.2004 shows that the learned Trial Judge has evaluated the evidence with a prejudiced mind and by first taking a decision that he has to convict the appellants, has gone about appreciating the evidence to tailor the discussion to meet the requirements of a pre-determined destination. Learned counsel urged that the second limb of the appreciation of circumstantial evidence; namely, does the evidence rule out the innocence of the accused has been ignored by the learned Trial Judge. Conceding that the conduct of the appellants was a little suspicious, learned counsel was at pains to urge that at best, the suspicious conduct remained a suspicious conduct and no more; and that howsoever strong or grave a suspicion might be, the same can never replace and substitute proof. Learned counsel urged that the evidence at best suggested that the appellants may be the assassins of Raj, but failed to achieve the standard to

prove that the appellants, must be and are, the assassins of Raj.

32. There is no eye witness to the incident. That there was a motive for the crime stands established from the testimony of PW-2 and PW-3. The appellants have not denied that they had knowledge that Raj was carrying a pregnancy of 19 weeks as of 5.4.2002. PW-2 has deposed that it was not medically possible to terminate the pregnancy. The family of Roop Lal is of a humble origin evidenced by their place of residence, an unauthorized colony in Delhi. The small plot of land on which Roop Lal has constructed his house measures no larger than about 60 sq. yds. His tenants are workers in a factory. Honour killings are not unknown in India. As observed by the learned Trial Judge the conservative Indian society disapproves sex beyond nuptial bonds; pre-marital or extra-marital sex is perceived to be immoral in India. Though law, neither suppresses nor denounces sex by consent between an adult male and an adult female, but social thinking in India does not approve of it whenever it deviates marital ties. Liberated citizens who deviate this social order invite social sanctions. It may not be acceptable in a liberated civic society, but unfortunately, the reality of life in the Indian society is this. A socially deviant child stigmatized the entire family and

all family members are adversely effected by the social behaviour of their fellow citizens who abjure social ties with the family as a whole. That Rajni, aged just a little over 18 years when her sister carried the unwed pregnancy, would face a problem in seeking a suitable match, if the baby was born to her unwed sister, would obviously have loomed large on the minds of the appellants. We concur with the learned Trial Judge that one piece of incriminating circumstance is that the appellants had a motive for committing the crime.

33. Now, motive to commit a crime being a circumstance wherefrom guilt can be inferred, is based on a presumptive logic i.e. it forms the basis to presume that the offender, having a motive, would have committed the crime; and hence, as any other presumptive evidence, is weak evidence and by itself is insufficient to convict the accused.
34. What would constitute a chain of circumstances exclusively pointing to the guilt of an accused in a case based on circumstantial evidence is a question which is not free from a judicial debate as is apparent from a plethora of authorities where the Court of Sessions has found the chain of circumstances to be complete; in appeal the High Court has held to the contrary and in further appeal the

Supreme Court has concurred with the view of the Court of Sessions; and vice versa, where the Court of Sessions and the High Court have held that the chain of circumstances is complete but the Supreme Court has held: not so.

35. But, all the decisions have concurred that where the death is of a wife and there is no evidence of a forced entry inside the house, with further evidence that the husband was present in the house when the wife died, unless the husband explains when he parted company with his wife or renders a satisfactory explanation of what had happened, on motive being proved on the part of the husband to murder the wife, without any further evidence, the chain of circumstances is complete wherefrom an inference of guilt must be drawn against the accused husband.
36. It is useless to multiply with authorities. The principle is well-settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is specially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if an accused is last seen with the deceased and there is no possibility of any stranger coming in contact with the deceased, the accused must offer an explanation as to how and when, he and the deceased, parted company. The explanation must be such that to a rational mind it is

probable and satisfactory. If the accused does so, it must be held that he has discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge; he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case relating to circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides the link in the chain of circumstances proved against him. We may emphasize that Section 106 of the Evidence Act does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It merely lays down the foundation for the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain. In the decision reported as 2006 (12) SCC 254 State of Rajasthan Vs. Kashi Ram an inference of guilt was drawn on the following incriminating circumstances:-

- (a) That he was not on cordial terms with his wife Kalawati.
- (b) On the evening of 3-2-1998 he was seen in his house with his wife Kalawati (the deceased).
- (c) The house of the respondent was found locked on 4-2-1998, 5-2-1998 and 6-2-1998.

- (d) On 6-2-1998 when his house was opened the dead bodies of his wife and daughters were found, and the medical evidence established that they had been strangled to death, the cause of death being asphyxia.
- (e) Since the respondent was not traceable the mother of the deceased, PW-5 Jai Kauri became anxious to know about their whereabouts and requested PWs 1 and 6 to search for them.
- (f) In the course of investigation the respondent never appeared at any stage, and for the first time he appeared in the scene when he was arrested on 17-2-1998.
- (g) Even after his arrest he did not offer any explanation as to when he parted company with his wife nor did he offer any exculpatory explanation to discharge the burden under Section 106 of the Evidence Act."

37. An FIR is admissible evidence but of limited utility i.e. as a corroborative piece of evidence. Thus, facts disclosed in an FIR can be used as corroborative evidence. No doubt, where the author of the FIR is an accused, as held in the decision reported as AIR 1966 SC 119 Aghnoo Nagesia Vs. State of Bihar a confessional first information report is hit by the bar imposed by Sections 24 to 26 of the Evidence Act and hence every confessional part thereof is inadmissible in evidence save and except what falls within the ambit of Section 27 of the Evidence Act. Even in respect of confessional first information reports, the parts relatable thereto which shows the conduct of the maker of the report are admissible in evidence of conduct by virtue of Section 8 of the Evidence Act. A perusal of the said

decision shows that the Supreme Court divided the statement of the accused made to the police, which constituted the FIR, into 18 parts. 15 parts whereof were found to be incriminating to the maker of the statement and hence were held to be inadmissible in evidence. Three statements i.e. statement No.1, 15 and 18 were held admissible in evidence as they related to the conduct.

38. Illustration 'e' to Section 8 of the Evidence Act reads as under:-

“e. A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.”

39. Mr. Rajesh Mahajan, learned counsel for the appellants does not dispute that there is an extreme delay in informing the police that Raj had been murdered inside the house. But, learned counsel urged, that in India, women folk are weary of going to a police station and do await the presence of a male companion, whom they trust; requiring the male companion to disclose any information to the police. Learned counsel urged that add thereon the fact, that on seeing the dead body of Raj, her aged mother and

the inexperienced younger sister aged just about 18 years would be expected to be perplexed and the mind would be searching for solace and hence both of them would not be expected to act as cool headed persons. To put it pithily, learned counsel urged that the conduct of the appellants cannot be measured divorced from the circumstance in which they were placed. Thus, counsel urged that no adverse inference can be drawn against the appellants on account of the fact that they have informed the police of Raj being found dead very late.

40. Thus, the question arises, whether the evidence on record shows that the mind of the appellants was perplexed; seeking solace elsewhere and hence not suspicious enough, wherefrom an inference of a guilty mind can be inferred?
41. But, before we begin our discussion, we may note that Rajni's statement Ex.PW-12/A is completely exculpatory of herself and her mother. No part is incriminating and hence the statement would be admissible in evidence. In any case, the statement would be admissible in evidence to show the conduct of Rajni and her mother. We note that if the entire statement is held inadmissible against Rajni and her mother, we would have not a version favourable to them, that the room in which Raj was found dead was not

locked from inside and was found locked from outside i.e. an outsider making a friendly entry. Now, when the police came to the house, the door of the room opening towards the street was found locked from inside. There is no sign of an entry by force inside the house. Thus, if said statement is ignored Rajni and her mother have to explain more. They have not done so as they have disclosed nothing of that sort in their statement made which examined under Section 313 Cr.P.C. It has to be noted that in the statement Ex.PW-12/A Rajni has tried to explain how the said door came to be locked from inside, when she stated (refer her statement No.16 in para 2 above) that when they entered the room her mother bolted the door from inside.

42. Indeed, it is a catch 22 situation for the appellants. But it cannot be helped.
43. Let us analyze the evidence, ignoring the conduct of Rajni and her mother as flows out of Rajni's statement Ex.PW-12/A.
44. We shall thereafter discuss the conduct of the appellants with reference to the said statement.
45. Seema PW-5 has deposed that in the morning hours of 17.4.2002, Rajni came to her house and told her that Raj has done something to herself. She reached their house accompanied by Rajni at 9:15 AM and saw Raj lying dead in

a room and that she told Darshana, who was present in the house, to inform the police. That they told her that they had informed their relations about the incident. As noted above, this testimony of Seema was not challenged by the appellants.

46. What is the conduct of Rajni and her mother which can be reasonably inferred from the deposition of Seema? Does it show the two ladies to be in a perplexed mind?
47. The house of Darshana and Rajni is House No.D-147, Bhagwati Vihar. As disclosed by Seema in her deposition, her house bears No.RZ-A-13, Uttam Nagar. It is obvious that the two houses are in a different block. What is the distance between the two houses is not known. But, situate in two different blocks, it is apparent that to transport oneself from one house to the other, one has to walk some distance; more than a mere steps. Be it 50 yards, be it 100 yards or be it more; the distance certainly would be more than a mere few steps. There is no evidence that Rajni went crying in a hysterical state to the house of Seema. The deposition of Seema shows that Rajni was composed when she reached her house. Seema does not say that Rajni was crying and was hysterical when she asked her to come to her house. Thus, we have evidence on record to show, that far from being perplexed, Rajni was

in a stable mind and was in complete senses. The testimony of Seema shows that when she reached the house where Raj was murdered, the time was 9:15 AM, and that she told Darshana, mother of Raj to inform the police. Seema has not deposed that she saw Darshana in a perplexed state or that Darshana was hysterical. Pertaining to Darshana, the testimony of Seema shows that even Darshana was in a composed state of mind.

48. Learned counsel for the appellants had urged that it is natural conduct for the appellants, both being ladies, one old and the other young and immature, to await the presence of some male member of the family or a known and a trusted male before informing the police. Seema has disclosed her age to be 22 years when she deposed on 6.1.2003 i.e. she was 21 years of age as of 17.4.2002. If Rajni and her mother went about informing Seema of Raj being murdered, the argument that they were awaiting the presence of some male member in the family as a justification of their conduct is simply not acceptable as it runs contrary to their acts; the acts being of informing Seema and bringing Seema to the house.
49. There emerges a possibility of a scheming mind of the appellants being in full operative senses in calling Seema to their house. This possibility emerges from the questions

put to Seema of Seema's brother Satish being friendly with Raj and the extent of friendship; of Raj introducing Satish for an account to be opened in the name of Satish; of Satish being on visiting terms with Raj. We wonder as to what other purpose would said line of cross examination serve to achieve, other than to take a shot in the dark, and depending upon the evidence finally brought on record, to urge that Seema and her brother could be the assassins. Seema who had innocently walked to the house of the deceased in the company of Rajni but left the house on her own could be possibly have been seen by somebody leave the house at about 9:15 AM and if said witness was produced in evidence by the defence, a possible line of defence that Seema and her brother murdered Raj could be projected. But, lest we be accused of revelling in surmises and conjectures, we leave it at that. But noting the fact that Seema's testimony rules out that Darshana and Rajni were in a perplexed state of mind.

50. What does the testimony of Jaipal PW-24, reveal to us, qua the conduct of Darshana and Rajni. His testimony shows that he interacted with Darshana for the first time on 5:30 AM and Darshana handed over the keys of the lock on the main gate to him. He unlocked the gate and handed over the lock to Darshana. He returned after about 1 hour and

knocked at the main gate. Darshana opened the gate. He has not deposed that he saw Darshana in a perplexed state. Jaipal has deposed that when he came home at 10:30 PM on 16.4.2002, on finding the main entrance locked he had knocked and Raj had opened the same. It is apparent that Raj and Darshana were present in the house at 10:30 PM on 16.4.2002. We note that the appellants have not denied when their statements were recorded under Section 313 Cr.P.C. that they were in the house along with Raj in the night of 16.4.2002 and that they were present in the house in the morning of 17.4.2002. We note that there is no cross examination of Jaipal with respect to the facts disclosed by him of interacting with Darshana in the morning of 17.4.2002. The only question put to him was whether he exchanged any words with Darshana to which he replied that he had no dialogue with Darshana. From the cross examination of the witness, we note that an attempt was made to show that Jaipal had ceased to be a tenant before the date of the incident as he was a defaulter in payment of rent; a line which was ultimately abandoned, evidenced by the fact that in their statements recorded under Section 313 Cr.P.C., the appellants admitted that Jaipal was a tenant in their house.

51. The testimony of Jaipal shows that Darshana was showing no signs of being perplexed. She was having a cool and a stable mind at 5:00 AM as also at 6:00 AM. The evidence of Jaipal shows that he left for his factory where he was employed as a worker at around 8:45 AM and that he found nothing abnormal till then. Seema has deposed that she had reached the house by 9:15 AM when summoned by Rajni who told her that something had happened to Raj. It is obvious that Rajni knew as to what had happened to Raj well before 9:15 AM. It remains a mystery as to why the mother and the daughter, who claimed in their arguments, that before informing the police they were awaiting the presence of some male relative or some male in whom they had a confidence, did not inform Jaipal of what they had seen. It is not out of place to note here that the testimony of Jaipal that Rajni rang him up at around 12:00 noon and requested him to come home has not been challenged. This shows that Jaipal, the tenant in the house, was a man in whom the mother and the daughter reposed faith and confidence.
52. We note further that even if we eschew reference to the drama enacted by the mother and the daughter in the late afternoon when Jaipal came back to the house somewhere after 1:45 PM, on being summoned by Rajni, as is evident

from his deposition, there is sufficient evidence in his deposition that the mother and daughter were not perplexed in the morning hours. We note that Jaipal has deposed that when he came to the house, the mother and daughter, pretending to be semi-unconscious, told him that Raj had not woken up and as a result inducing him to push the door where Raj was expected to be sleeping; he lost his balance when he saw the body of Raj. Darshana stabilized him by holding him i.e. giving him support and brought him outside the said room and gave him water to drink. Is this conduct the conduct of a perplexed and a grieving mother? No rational mind would be persuaded to say yes.

53. But, for the reason said incriminating circumstance of conduct has not been put to the appellants, we exclude the subsequent conduct of the appellants while considering the incriminating circumstances against the appellants.
54. The conduct of the appellants of their state of mind in the morning of 17th April 2002 as is emerging from the deposition of Seema PW-5 and Jaipal PW-24 shows that both were in full control of their cognitive faculties and showed neither remorse nor a trouble nor a perplexed mind. Their acts and deeds evidence a highly suspicious conduct; least bit, a perplexed mind seeking solace elsewhere.

55. What do we mean by the last sentence of the preceding paragraph. We think we need to clarify a little. When a mother sees her young daughter murdered and when a young girl sees her elder sister murdered, it is but natural that both minds would be disturbed; the thinking faculties would be temporarily impaired; the disturbed mind without the backing of the thinking faculty would yonder here and there, searching within itself the answer to the question: what should I do? Where do I go? Whom do I summon? The thing to be done. The place to go or the person to summon, is the solace we are referring to.
56. Rajni and her mother do not evidence having any such state of mind, searching the questions, what to do; where to go; whom to inform etc. etc. Seema's house was the place they had chosen to go. Seema was the person whom they summoned. Seema was the person they expected to inform the police. Why they did so? We need not answer. What is relevant is that the evidence establishes that the mother and daughter were not in a disturbed and a perturbed condition.
57. Thus, the only reason which surfaces for the delay in informing the police is that the mother and daughter were buying time to think of a strategy and inform the police accordingly as to what had happened.

58. The time purchased by the appellants by lodging a belated information with the police, being used to spin a cock and bull story, is revealed from Rajni's statement Ex.PW-12/A made to SI Kashmiri Lal PW-12 on basis whereof the FIR has been registered. We have reproduced the statement in para 2 above by breaking the same into different parts. Statement 3 of Rajni is to the effect that Raj used to sleep in the room adjoining the gali and she i.e. Rajni and her mother used to sleep in the inner room and the father used to sleep in the T.V. room. Statement 4 is to the effect that she and her sister watched television till 11:00 PM in the night and thereafter her sister slept in her room and she went to her mother's room to sleep. Statement 5 is that she and her mother got up at around 8-8:15 AM in the morning and took a bath. Statement 7 is to the effect that thereafter her mother told her to wake up Raj. Statement 8 and 9 are to the effect that first Darshana knocked at the door where Raj was sleeping and there being no response, she i.e. Rajni knocked at the door. Statement 10 is to the effect that on getting no response they peeped from the mesh door but could not see Raj on the bed.
59. That takes us to the site plan Ex.PW-7/A; pen profile whereof has been stated by us in paras 10 to 12 of our decision. Though there is no reference to a door with a

mesh in the site plan, but with reference to Rajni's statement Ex.PW-12/A, learned counsel for the appellants and the State conceded that the said door has to be door mentioned by us as the second door in our pen profile while profiling the site plan Ex.PW-7/A, for the reason, the bed cannot be fully seen from door No.3 and obviously Rajni and her mother had not gone outside to knock at door No.1 which opens on to the gali. The bed can be partially seen from door No.3; and if the person sleeping on the bed, which is a double bed, is lying towards the partition wall on which door No.3 is affixed, said person cannot be seen. Now, Rajni is clear in her statement that she and her mother could not see Raj on the bed. The site plan shows that the dead body of Raj was lying on the floor on the other side of the bed. The left arm stretching outwards; as is revealed from the photographs Ex.PW-21/1 to Ex.PW-21/8, is about 2 feet away from the bed. The body is facing upwards. The torso uses further space about 14 inches further away from the bed. The outwardly stretched right arm further moves away at least a distance of about 1 foot. Thus the out stretched arm is at least at a distance of 4 feet from the bed. It is just not conceivable that he/she who saw inside the room from the door with the mesh could not have seen the dead body of Rajni lying in a pool

of blood on the floor. The reader of the decision may recreate the scene inside the room, with reference to the site plan, pen profile whereof has been noted by us in paragraphs 10 to 12 of our decision; with further clarification with reference to the photographs and the discussion thereon, in paras 13 and 14 of our decision. Any reader who would do so, can visualize for himself what can be seen and what cannot be seen inside the room. It is important to note that the unfortunate date was 17.4.2002. By mid April the sun is bright and shining in Delhi by 7:00 AM and even when the curtains are drawn, sufficient light filters through to light a room to an extent, a blood stained body becomes visible.

60. Statements No. 13 to 15 of Rajni informs that she and her mother went outside the house and saw the room adjoining the gali bolted from outside. They opened the door and entered the room and were horrified to see Raj lying dead in a pool of blood. As per statement No.16 Darshana bolted the door adjoining the gali. Statement No.17 is to the effect that thereafter both of them went out to the gali from the other door and bolted the said door from outside as it was before and thereafter, as per statement No.18, Rajni went to a PCO Booth to contact Seema and her maternal uncle but could contact none. Statement No.19 is

to the effect that thereafter she went to Seema's house and called Seema to her house.

61. Far from showing a perplexed and a troubled mind, the contemporaneous conduct of Rajni and her mother which oozes from aforementioned statements of Rajni, show that mother and daughter were in full control of themselves.
62. We had referred to illustration e to Section 8 of the Evidence Act in para 38 above. It guides us that where an accused tenders evidence of facts which are found false and are a pretence to an appearance favourable to the accused, the same are evidence of conduct and are relevant.
63. The conduct of Seema and her mother as disclosed in the statement Ex.PW-12/A of Seema show that both of them have schemed to overcome the incriminating circumstance of there being no forced entry inside the house. That the door opening to the gali was found locked when the police arrived has been sought to be explained away by stating that actually the door was found unlocked from inside and that when the mother and daughter entered the room from the said door from the gali, the mother locked the same from inside. This conduct is relevant and incriminating.
64. The delay in informing the police, we re-emphasize, is writ large. The explanation that it is explainable because the

appellants were in a perplexed state of mind is not acceptable. The only inference reasonable possible is that the mother and the daughter kept on thinking as to what would they tell the police and till the time they could not think of a plausible story, they kept themselves on a deliberate hold. The belated information being given to the police is also a relevant piece of conduct, incriminating in nature against the appellants.

65. That two people have assaulted Raj is apparent from the injuries noted in the post-mortem report which shows that the 7 stab injuries noted at serial No.1 are all inflicted by a blunt piercing object and the other injuries are the result of a sharp edged object being used. As noted above, the purity of the seizure of the knife and the screw driver has got tainted due to the callous attitude of the Investigation Officer and thus we are handicapped to consider said evidence. But, independent thereof, through the medium of the post-mortem report, we have unimpeachable evidence that two weapons of offence were used; one being a blunt piercing weapon and the other a sharp edged weapon. This shows that the assailants were two.
66. There is no evidence that the entry in the house was a forced entry. The evidence, a fact admitted by the appellants, shows that the appellants and Raj had slept in

the house in the night of 16th and 17th April 2002. The evidence establishes that the appellants were present in the house all throughout the night. They were present in the house in the morning at 9:15 AM when Seema had gone to the house on being summoned by Rajni. The appellants have not offered any explanation as to when they parted company with the deceased nor have they offered any explanation to discharge the burden put on their shoulders under Section 106 of the Evidence Act. There is evidence of motive for the appellants to kill the deceased i.e. the family honour. Seeking guidance from the decision in Kashi Ram's case (supra) we hold that the chain of circumstances is complete; in both situations i.e. by excluding Rajni's statement Ex.PW-12/A and the conduct of the appellants emerging therefrom; and alternatively even by including the same from the evidence to be considered by us and the conduct of the appellants emerging therefrom; to hold that the incriminating circumstances form a complete chain and are consistent with no other hypothesis except the guilt of the appellants.

67. We wish to add a foot note to our decision. The facts of the instant case are a classic illustration of the oft repeated statement by sociologist that the society creates the crime and the individuals give effect to the crime. The appellants

are the unfortunate victims of the social thinking in India. They acted thinking that by doing away with Raj they could hide the social shame and stigma of Raj being an unwed mother. Rajni, aged 18 years, would presumably be under the influence of her mother, who in turn, was concerned about the fate of Rajni because she thought that even Rajni's future would be clouded if the reputation of the family was sullied. The motive for the crime is to save the family honour. If the society would not frown upon sex outside marriage and would accept a single parent, there would have been no motive and hence no murder. We feel sorry for the mother and the daughter, more so for Rajni, whose youth would be spent in the four corners of a prison. Her life would be reduced to the sound of the alarm bell ringing in the morning and the bell ringing in the evening when activities in the prison come to an end. The only thing she would wait for in life is the sound of the bell in the morning and the sound of the bell in the evening, requiring her to go back to her barrack. She appears to be a junior partner with her mother; but the mandate of Section 34 of the Indian Penal Code brushes her with the same taint as her mother. The minimum sentence prescribed by law for the offence of murder has been inflicted upon the appellants i.e. to undergo imprisonment for life. Our

sympathy cannot be a justification to bend the law. Our hands are tied on the sentence. Before formally dismissing the appeals, we can only hope that if an appeal is made to the executive for mercy our decision would be well read and a thought bestowed to the present para.

68. The appeals are dismissed.

69. Rajni is on bail. Her bail bond and surety bond are cancelled. She is directed to surrender and undergo the remaining sentence.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

March 13, 2009
MM