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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 20.2.2009

Judgment delivered on: 04.03.2009

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CRL.A.761/2008

SANJEEV

..... Appellants

Through: Mr.Mohit Mathur, Advocate with
Mr.Vishwajeet Singh, 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? Yes
3. Whether judgment should be reported in Digest? Yes

: PRADEEP NANDRAJOG, J.

1. By means of a telephone call received from an unknown person, the police received information at 5.40 PM on 27.2.2001 about the death of a woman at House No.K-48 Krishan Vihar. HC Bhura Singh PW-21, the duty officer at PS Sultanpuri, recorded DD No.58-B, Ex.PW-21/A, noting the said information. SI Ajay Solanki PW-22, and Const.Ashok Kumar PW-20, left for the house at around 5.45 PM and found the dead body of a lady on a cot inside the house. They learnt that the deceased named Upma was married to the appellant about 7 months back. Sri

Krishan PW-11, a photographer was called, who took photographs Ex.PW-11/1 to Ex.PW-11/3; negatives whereof are Ex.PW-11/4 to Ex.PW-11/6, of the dead body. The dead body was seized and sent to the mortuary of Sanjay Gandhi Hospital.

2. Unfortunately, SI Ajay Solanki did not bother to conduct any proceedings at the spot in the form of summoning the mobile crime team to lift chance finger prints etc. from the place of the occurrence. He did not prepare a rough sketch of the place of the occurrence. He did nothing at all and after sending the body to the mortuary, went back to the police station without attempting to inquire in the neighbourhood and try and ascertain the whereabouts of any person who could throw light on how Upma died.

3. Nothing happened on the 28th of February 2001. Nothing happened on 1st of March 2001. On 2nd March 2001, Shri S.C.Saluja PW-13, the Sub Divisional Magistrate of the area recorded the statement Ex.PW-9/A of the father of Upma and made an endorsement Ex.PW-13/B thereon and forwarded the same for a FIR to be registered. The reason was that Upma's father made a statement to the effect that the appellant and his family members used to harass his daughter for dowry and that his daughter had been killed by them. HC Shyam Sunder PW-19, received the statement made by father of Upma and the

endorsement of the Sub Divisional Magistrate, and registered the FIR Ex.PW-19/A on 2.3.2001.

4. On said date i.e. 2.3.2001, Dr. Komal Singh PW-10, conducted the post-mortem of Upma at 2.30 PM and noted in the post-mortem report Ex.PW-10/A that there were abrasions on the upper and lower lip of the deceased. There were bruises on the right forearm. There were four nail marks on the lateral side on the right side of the neck as also two nail marks on the left lateral side of the neck. The right upper cornex of the thyroid was broken. He opined that the cause of death was asphyxia due to throttling. He opined that the time of death was about 72 hours prior.

5. Statements of Raj Kumar PW-1, the paternal uncle of deceased Upma; Smt.Maharani PW-3, the mother of the deceased; Smt.Urmila PW-5, the paternal aunt (chachi) of the deceased; Shri Om Vir Singh PW-12, a cousin of the deceased and Shri K.C.Dhima PW-8, a neighbour of the deceased were recorded by the investigating officer. The family members of the deceased informed the police that the appellant and his family members used to harass Upma for dowry. K.C.Dhima PW-8 informed the police that around 2.00 PM on 27.2.2001 he had seen the appellant remove his wife to a hospital in a TSR.

6. Since the post-mortem report of the deceased clearly showed that the deceased had died due to strangulation and it was clearly a case of homicide; in view of the statements made by the persons whose names have been noted in para 5 herein above, a charge-sheet was filed indicting the appellant; his sister Laxmi; her husband Rishipal; Narender the elder brother of the appellant; his wife Suman; Devender the younger brother of the appellant and Madan Kumar the brother of Rishipal as the accused persons. The appellant was charged for the offence punishable under Section 302 IPC. An alternative charge under Section 304-B/34 IPC was framed against all the accused as also a charge under Section 498-A/34 IPC.

7. At the trial, HC Bhura Singh PW-21 proved DD No.58-B, Ex.PW-21/A. SI Ajay Solanki PW-22 and Const. Ashok Kumar PW-20 deposed that on receipt of DD No.58-B they went to the house and saw the dead body of Upma and seized the same and sent it to the mortuary. Shri Krishna PW-11, proved the photographs of the dead body taken by him. Dr. Komal Singh PW-10, proved the post-mortem report Ex.PW-10/A. Shri S.C.Saluja PW-13, the Sub Divisonal Magistrate of the area proved the statement Ex.PW-9/A of father of the deceased recorded by him and his endorsement Ex.PW-13/B thereon. HC

Shyam Sunder PW-19 proved the FIR Ex.PW-19/A recorded by him on 2.3.2001.

8. Raj Kumar PW-1, the paternal uncle of the deceased Upma deposed that Upma was married to Sanjeev in July 2000 and his brother gave dowry articles according to his capability. That the accused Laxmi, Rishipal, Suman, Narender, Devender and Madan Kumar are residents of Sultanpuri. That they were the relations of Sanjeev. That 1½ - 2 months after her marriage Upma told him that the members of her husband's family were harassing her, demanding more dowry. He went to see Upma but was not allowed to meet her. All the accused persons told him that he cannot meet Upma. He was insulted and was told that a motor cycle ought to have been given in dowry. In lieu of the motor cycle they demanded Rs.40,000/- in cash. He was threatened that if by Holi festival needful was not done, Upma would not live to celebrate Holi. That he had spent about Rs.35,000/- to Rs.40,000/- on the marriage of Upma. That on 27.2.2001 somebody informed him over the telephone that Upma had fallen from the roof. He and his wife went to the house and some children told him that Upma had been beaten and removed to Sanjay Gandhi Hospital. He went to the hospital and saw the dead body of Upma. On being cross-examined, he disclosed that a television, a fridge, cooler, bed, ornaments and

clothes as also cash were given in dowry; but admitted that no receipts thereof were handed to the police. He denied the suggestion that all the accused persons were living separately. He denied that he was deposing falsely.

9. Suffice would it be to note that save and except deposition about a demand for a motor cycle and Rs.40,000/-, PW-1 did not depose of any other demand for dowry.

10. Smt. Maharani PW-3, the mother of Upma deposed that Upma was married with Sanjeev in July 2000 and that they had given her dowry articles. That on Rakshabandan day, she noticed that an earring of Upma was twisted and on being questioned Upma told her that her husband had beaten her and had taken her jewelry. That her daughter informed her that Sanjeev wanted money to start some business. That she did not tell her husband about Upma's plight because of his ill-health. That Upma told her that the accused used to demand dowry and used to beat her. That 1½ months after Rakshabandhan, Raj Kumar, the younger brother of her husband, told her that he had given Rs.40,000/- to Sanjeev. That after 15 days thereof when her husband went to the house of Sanjeev, he (i.e. Sanjeev) demanded a motor cycle. Her husband gave his old scooter to Sanjeev, who after using the same for a month returned the scooter and demanded a motor cycle. That Sanjeev used to

beat her daughter after consuming liquor. That at the marriage of the son of one Balbir Singh, which she had attended, after consuming alcohol, Sanjeev gave beating to her daughter Upma. That Sanjeev squandered the money given to him at the time of marriage. That their request to Sanjeev to behave properly was not heeded by him.

11. On being cross-examined she failed to disclose the registration number of the scooter given to Sanjeev. She admitted that her daughter and Sanjeev used to freely visit their house. On being questioned as to who informed them about Upma's death, she responded that a boy named Amit had come to their house at 5.00 PM and had given them the information. She corrected herself that Amit had told her that a telephone call was received from Upma's matrimonial house. She stated that when she went to the matrimonial house of Upma, accused Laxmi and Suman met her. She stated that she could not tell how much money was spent in the marriage of her daughter.

12. Urmila PW-5, deposed that Upma was the daughter of the elder brother of her husband and was married to the appellant on 10.6.2000. That in October 2000 Upma told her that her husband and his relations i.e. the accused persons used to demand money from her. That Upma used to constantly contact her over the telephone and tell her that the accused persons

used to trouble her for bringing money from her parents. That on 24.2.2001 she rang up Upma, but accused Madan Kumar did not allow Upma to come on the line. With great difficulty Upma came on the line and on hearing her voice started weeping, saying that the accused persons were demanding money and would kill her. At that, accused Suman snatched the receiver from her hand. In cross-examination she admitted that her statement recorded by the police under Section 161 Cr.P.C. does not contain the statement that Upma had been making telephone calls to her; that there was no mention of the telephone call dated 24.2.2001, that there was no mention in the said statement that the family members of appellant did not permit Upma to speak to her and that when Upma did finally speak to her, she said that she feared for her life.

13. Abalq Singh PW-9, father of Upma, deposed that his daughter was married to the appellant on 10.7.2000 and that at the time of the marriage there was no demand for dowry. That the usual house hold goods, as per his financial condition, were gifted by him to his daughter. That after 1½ months of the marriage a demand for gifting one colour television and a fridge was satisfied by him by gifting the same. That on 15.8.2000 i.e. Rakshabandhan day, accused Sanjeev demanded a motor cycle. He gave his scooter bearing No.HR-26-2905 to him telling him

that when his financial position would improve he would give a motor cycle to Sanjeev. That his daughter told him that the accused persons used to beat her for not bringing a motor cycle. That Sanjeev used to consume liquor and thereafter used to beat her. That she informed him that Sanjeev had started gambling. That a few days before Dusshera festival Upma had complained to him about ill-treatment. He took Dhruv Pal, the mediator who had arranged the marriage, to the house of Upma where all accused persons assured him in presence of Dhruv Pal that his daughter would be treated with respect. That on 27.2.2001 he gave a telephone call at pay phone of the accused persons and was informed that Sanjeev was not present in the house. Tara wife of accused Madan Kumar responded on the phone. Then, accused Suman came on the line and told him to make a call later on. He made a second call which was responded to by Tara, who told him that Sanjeev was not present in the house. That his wife's sister informed him at around 4 – 5 PM that Upma had died. He went to the house of Upma and learnt that the police had taken the body of Upma. He went to the police station and learnt that Upma had been removed to Sanjay Gandhi Hospital. He went to the hospital and saw the dead body of his daughter.

14. On being cross-examined he deposed that he selected Sanjeev as the groom for his daughter as his family owned properties and Sanjeev was trading in chemicals and had a handsome income. He deposed that except for the dowry demand pertaining to a motor cycle, no other demand was ever raised. He deposed that he spent about Rs.1,50,000/- on the marriage of his daughter and that he was indebted in the sum of Rs.50,000/-, as on the date he deposed in Court i.e. 19.7.2002.

15. Shri Om Vir Singh PW-12, deposed that Abalaq Singh the father of Upma was the husband of his maternal aunt and that on 26.2.2001 he went to meet Upma and when he reached her house he witnessed a minor altercation between Upma and Sanjeev. All other accused persons were participating in the altercation. When he enquired from Upma as to what was the matter, she informed that the accused persons were harassing her for dowry and that accused Narender wanted Sanjeev to be married to the sister of Suman. On cross-examination he admitted that he had not informed the police about having visited Upma's house on 26.2.2001

16. K.C.Dhima PW-8, deposed that on 27.2.2001 he was present at his house and about 2.00 PM saw appellant Sanjeev carrying his wife Upma in a TSR, from his house to a hospital and on making inquiry as to what had happened, Sanjeev told

him that he had returned home to take lunch and found Upma in an unconscious condition, and that her earrings and ornaments were missing and that he was carrying Upma to the hospital. He deposed that Sanjeev was alone in the house at that time. On being cross-examined, he deposed that all the accused persons were residing separately in their own residences.

17. The appellant and other co-accused persons examined four defence witnesses viz. Suresh Kumar DW-1, Dhruv Pal DW-2, Balbir Singh DW-3 and Ashok Kumar DW-4.

18. Suresh Kumar DW-1 deposed that he was a neighbour of appellant Sanjeev and on 27.2.2001 was working at the godown behind the house of Sanjeev. He heard cries of Sanjeev and rushed to his house. Sanjeev told him as to what had happened to his wife. He, along with Sanjeev, took Upma to a hospital at Budh Vihar. The doctor declared her dead. They came back with the body of Upma. In the evening, the police came to the house. He deposed that Sanjeev and his wife used to live alone and that the other accused persons were residing at different places.

19. On being cross-examined he stated that the houses of other accused persons are within a radius of about 50 yds. from the house of Sanjeev.

20. Dhruv Pal DW-2, deposed that he was the mediator and had arranged the marriage of Sanjeev with Upma and that no dowry was demanded at the time of the marriage. On being cross-examined, he deposed that Sanjeev was not related to him and that it was wrong that he was aware that Upma was being harassed for dowry.

21. DW-3 Balbir Singh, the maternal uncle of the deceased (Upma's mausa) deposed that marriage of Upma with Sanjeev was solemnized in his house as he was having a government accommodation and that after her marriage Upma used to visit him and never complained of any harassment.

22. Nothing much turns on the deposition of DW-4 for the purposes of this appeal as he has deposed that the accused Rishipal was in his office from 11.00 AM to 6.30 PM on the day of the incident. The reason is that all accused except Sanjeev have been acquitted.

23. Acquitting all the accused of the charge under Section 304-B IPC, the learned Trial Judge has held that the evidence on record establishes that Sanjeev was residing alone with Upma and that the post-mortem report clearly revealed that Upma died a homicidal death. We note that Sanjeev's presence with his wife Upma and no other co-accused being present in the house has been used by the learned Trial Judge as an

incriminating circumstance against accused Sanjeev pertaining to the homicidal death of Upma. To quote from the impugned decision, in para 97 the learned Trial Judge has held:-

“It has been deposed by the DW that accused Sanjeev along with his wife was living in the house, whereas all other accused persons were residing at different places. Hence, it was for the accused to establish that he was not in the house and was present at some place from where he could not have come before 2.00 PM, to commit the crime”.

24. Holding that the evidence establish that Sanjeev was absconding and returning a finding that the said conduct was a circumstance wherefrom guilt could be inferred; with reference to the deposition of Upma’s father Abalq Singh PW-9, the learned Trial Judge has observed as under in para 100:-

“Abalq Singh has testified that on 27.2.2001, he gave telephone call at the pay phone of the accused persons and came to know that accused Sanjeev was not present in the house. The call was attended by Tara, wife of accused Madan Kumar. Initially, Tara told that Sanjeev was present at the house but subsequently she told that he was not present at the house. Similarly, Suman stated that Sanjeev was not present at the house. On asking, Abalq Singh again made telephone call and he was again told that Sanjeev was not present at the house. The sister of wife of Abalq Singh from DESU Colony, Najafgarh, Delhi informed them at about 4/5 PM that Upma had expired.”

25. Discussing the charge against the accused persons for the offence punishable under Section 498-A IPC, the learned Trial Judge has noted that Abalq Singh PW-9 testified that at the time of marriage no demand of dowry was made. Learned Trial Judge

has further noted that as per him he gifted a colour television set and a fridge after 1½ months of the marriage. His wife Smt.Maharani PW-3 never deposed to said fact but interestingly Rajkumar PW-1 the paternal uncle of the deceased i.e. the younger brother of Abalq Singh deposed that the television and the fridge were gifted at the time of the marriage. With reference to his testimony that he spent between Rs.35,000/- to Rs.40,000/- on the marriage of Upma, the learned Trial Judge has held that if this was true, it evidenced his active participation in the marriage of his niece Upma and that the conflicting statements of the family members viz. Abalq Singh, his wife Maharani and that of Rajkumar did not inspire confidence. Pertaining to the deposition of Smt.Maharani PW-3, that on Rakshabandan day she noticed that Upma was wearing twisted earrings and on enquiry Upma told her that the appellant used to beat her and had taken her gold ornaments; the learned Trial Judge has noted that she had not stated said fact to the police when her statement was recorded. Pertaining to the demand of a motor cycle or alternatively the sum of Rs.40,000/-, the learned Trial Judge has noted the contradictions in the statements of PW-1, PW-3 and PW-9 in paras 62 to 64 and 70 of the impugned decision which read as under:-

“62. The statement of PW-3 Smt.Maharani and PW-9 Ablak Singh are contradictory, as to what was told to them by Upma at the time of visit on the occasion of Raksha Bandhan, PW-1 Raj Kumar has claimed that about 1 ½ to 2 months of the marriage of Upma with accused Sanjeev, he received a telephone call from Upma and she told him that her husband and his family members were demanding more dowry and were harassing her. Raj Kumar visited the matrimonial house of Upma. The accused persons demanded motor cycle and Rs.40,000/-, which had not been given in the marriage. He sought time to fulfill the demand. The accused persons warned him that in case, the demand would not be met before Holi festival, then Upma would not be able to see Holi. The statement of Raj Kumar also does not corroborate the statement of Smt.Maharani, that at the time of visit on the occasion of Raksha Bandhan, the ear-rings of Upma were twisted. However, the statements of PW-1 Raj Kumar, PW-3 Smt.Maharani and PW-9 Ablak Singh co-relate the demand of motor cycle and a sum of Rs.40,000/- by accused Sanjeev. Ablak Singh has been cross-examined at length. From his cross-examination, accused Sanjeev and others have not been able to create a dent in the case of Ablak Singh, that he had supplied his old scooter to the accused, which was returned back in damaged condition. Ablak Singh has admitted that now, he has sold the said scooter and it is not in his possession.

63. PW-3 Smt.Maharani has testified that after 1 ½ months of the festival of Raksha Bandhan, her Devar (younger brother of the husband), Shri Raj Kumar arranged a sum of Rs.40,000/- and went to the house of accused Sanjeev and handed over that amount to accused Sanjeev. Raj Kumar returned back and told PW-3 that money had been given to accused Sanjeev. Raj Kumar has not deposed that he had arranged the amount of Rs.40,000/-, or that the same was given by him to accused Sanjeev at his house, or that on his return, he confirmed to PW-3 that the amount was paid to accused Sanjeev. Ablak Singh has also not testified that the amount of Rs.40,000/- was paid to accused Sanjeev by Raj Kumar, PW-5 Smt.Urmila, wife of Raj Kumar has not deposed that her husband ever told her that he had given Rs.40,000/- to accused Sanjeev.

Consequently, the statement of Smt.Maharani is unfounded and cannot be believed to hold that Raj Kumar had made payment of Rs.40,000/- to accused Sanjeev.

64. In spite of the fact that it has not been confirmed that Rs.40,000/- was paid to accused Sanjeev, the prosecution has brought evidence on the record in connection with the demand of dowry and harassment and torture caused to Upma. Ablak Singh made statement before the SDM on 2.3.2001. In that statement also, Ablak Singh has stated that at the time of marriage of Upma, there was no demand of dowry. After sometime of the marriage, the motorcycle was demanded. He was not having money to meet the demand and as such, he had given his old scooter, but it was returned back in damaged condition. The demand of motor cycle was continuously pressed and on that account, Upma was harassed. The complainant also came to know that accused Sanjeev Singh used to consume liquor and then, he used to beat Upma.

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70. The parents of Upma have deposed that the demand of motor cycle was raised by Sanjeev, whereas PW-1 Raj Kumar has deposed that at the time of visit to the matrimonial house of Upma, all the accused persons demanded motor cycle and sum of Rs.40,000/-. The statements of parents is to be believed about the raising of demand of motor cycle by accused Sanjeev and not by other accused persons. It is also corroborated by the complaint of Ablak Singh to SDM, wherein he has stated that the motor cycle was demanded and on that account, his daughter was harassed as he came to know later on that Sanjeev Singh used to beat Upma after consuming liquor. There is no allegation that other accused also used to beat Upma."

26. The learned Trial Judge has heavily relied upon the fact that Abalq Singh, the father of the deceased, had deposed that Dhruv Pal was the mediator who had facilitated the marriage

and that Dhruv Pal DW-2 had deposed that there were no dowry demands and that none were ever brought to his notice. The learned Trial Judge has further noted that Balbir Singh DW-3 the maternal uncle of Upma (Upma's mausa) was the one at whose house marriage of Sanjeev and Upma was solemnized and that even he had refuted any demand for dowry.

27. The learned Trial Judge has accordingly held that the prosecution could not establish the charge for the offence punishable under Section 498-A IPC against the accused, save and except Sanjeev. Pertaining to Sanjeev, the learned Trial Judge has held that there is sufficient evidence to establish that Sanjeev used to beat his wife Upma after consuming liquor and that he was the only one who demanded a motor cycle as dowry.

28. Convicting Sanjeev for the offence of murdering his wife and for the offence punishable under Section 498-A IPC, learned Trial Judge has enumerated the following circumstances in para 101 as under:-

“101.The prosecution has been able to establish the following circumstances:-

(i) Accused Sanjeev was married with Upma and both of them were living in House No.K-48 Krishan Vihar, Sultan Puri, Delhi;

(ii) After the marriage, accused Sanjeev started raising demand of dowry, including the

motorcycle. He caused harassment, torture and beatings to Upma to force her to bring dowry from her parents house;

(iii) Upma died to an unnatural death on 27.2.2001 around 2.00 PM. The Autopsy Surgeon has given the cause of death as asphyxia, due to throttling, produced by an assailant;

(iv) Presence of accused Sanjeev has been established at his house for taking unconscious Upma to the hospital in the presence of PW-8, K.C.Dhima and DW-1 Suresh Kumar. The doctor declared her brought dead;

(v) Accused Sanjeev has taken the plea that he had come to his house on 27.2.2001 at 2.00 PM to take lunch and found his wife Upma lying unconscious. The accused has failed to give explanation as to where he was present before allegedly coming to his house to take lunch. His plea of alibi has not been established;

(vi) The conduct of the accused in telling the PW-8, that his wife was found lying unconscious and to DW-1 Suresh Kumar that "as to what had happened to his wife";

(vii) No evidence of presence of any other relative of accused Sanjeev at his house on 27.2.2001 before 2.00 PM or at the time of taking unconscious Upma to the hospital. The accused and his wife alone used to live in the house.

All the aforesaid circumstances have been confirmed and have completed a chain to infer the guilt of accused Sanjeev in causing the murder of his wife, Upma. The circumstances as brought on the record, do not point out towards the innocence of the accused."

29. At the hearing held on 20.2.2009, learned counsel for the appellant did not make any submissions pertaining to the

conviction of the appellant, for the offence punishable under Section 498-A IPC. The reason appears to be that there is evidence against the appellant of beating his wife Upma because he thought that by treating her with physical cruelty her cries would compel her parents to satisfy his demand for a motor cycle. Further, the appellant has already undergone the sentence imposed for the offence punishable under Section 498-A IPC i.e. to undergo RI for two years. The appellant has been in jail for nearly seven years when the sentence was pronounced. We note that the appellant has been in judicial custody for eight years when the appeal was argued and probably for said reason, the learned counsel for the appellant did not bother to trouble himself pertaining to the appellant's conviction for the offence punishable under Section 498-A IPC.

30. For the offence of having murdered his wife, we find that the evidence against the appellant is his past conduct, i.e. the threats to his wife, that if her parents did not give him a motor cycle he would kill her, as also the evidence that Upma died around 2.00 PM and that around said time the appellant was in his house as deposed to by K.C.Dhima PW-8 and Suresh Kumar DW-1. The learned Trial Judge has held that the explanation of the appellant that he had returned to his house at around 2.00 PM to take lunch and found his wife in an unconscious condition

could not be accepted because the appellant has not proved his whereabouts prior to returning home. Though, while enumerating the incriminating circumstances against the appellant, the learned Trial Judge has not noted the same, but as noted herein above in para 24, in para 100 of the decision the learned Trial Judge has noted that the family members of the appellant gave evasive replies to the presence of the appellant in the house on 27.2.2001. The same has been opined by the learned Trial Judge as an incriminating conduct to inculcate the appellant.

31. Pertaining to the opinion of the learned Trial Judge as penned in para 100 of the impugned decision, we may note that the learned Trial Judge has noted the inconsistencies and improvements in the deposition of the relations of Upma while evaluating their evidence pertaining to the offence under Section 498-A of which all the accused were charged. The learned Trial Judge has held that all the co-accused of the appellant were residing in separate houses, and that the deposition of Urmila PW-5 that on 24.2.2001, the co-accused prevented Upma from speaking with her was unbelievable for said reason.

32. If that be so, it is difficult to believe that the relatives of Sanjeev could have at all given evasive response over the

telephone as claimed by Ablaq Singh, because their very presence in the house becomes doubtful.

33. It is apparent that the relations of the deceased have deposed falsely to implicate the co-accused and hence their testimony has to be sieved carefully, to separate the grain from the chaff.

34. The learned Trial Judge has found the conduct of the appellant suspicious from the fact that he was seen removing his wife to the hospital and he told DW-1 and PW-8 that when he came to the house to take lunch he found his wife unconscious and hence was taking her to the hospital.

35. Is it so?

36. We do not think so. Indeed, if a husband who returns to the house to take lunch finds his wife not responding and appearing to be unconscious, the immediate act of every husband would be to rush her to the nearest hospital.

37. Suresh Kumar DW-1, has categorically deposed that he rushed to the house of Sanjeev when he heard his cries and assisted him in taking his wife to a hospital at Budh Vihar. We note that the learned Trial Judge has relied upon the deposition of DW-1, to return a finding, that the same evidences the presence of the appellant in the house at around 2.00 PM.

38. The appellant has not denied his presence in the house at 2.00 PM. What he had stated to the Court, when examined under Section 313 Cr.P.C., that when he returned to the house at 2.00 PM to take lunch he found his wife not responding to him.

39. The learned Trial Judge has failed to note that the testimony of PW-8 and DW-1, wherein both have corroborated each other, which evidences the conduct of the appellant to summon a TSR and remove his wife to a hospital in full public view. Far from being indicative of his guilt, the conduct of the appellant probablizes his innocence for the reason if he was the murderer of his wife his conduct would have been to hide himself. What prevented him from simply fleeing from his house and returning late evening? Would this not have been a good alibi in light of the fact that the deceased had died around 2.00 PM? These are some of the questions which have neither been posed, much less answered by the learned Trial Judge. The conduct of the appellant, in taking the help of a neighbour and rushing his wife to a hospital, shows that the appellant had nothing to hide and he wanted medical treatment to be given to his wife.

40. It is settled law that, in a case of circumstantial evidence, the chain of circumstances must meet the twin requirement i.e.

point towards the guilt of the accused and rule out the innocence of the accused. We need not note the plethora of authorities where the Courts have noted that the circumstances emerging from the evidence points towards the guilt of the accused but do not rule out the innocence, and hence benefit of doubt has to be given to the accused. Howsoever strong, suspicion can never take the place of proof.

41. Though unfortunate, but the learned Trial Judge has ignored the fact that for three days, no meaningful investigation was conducted by the police. The FIR was registered on 2nd March 2001.

42. The appellant has been prejudiced by the said fact for the reason, the post-mortem report of the deceased shows scratch marks and nail marks on the neck. The best evidence, whether incriminating or exculpatory, of the appellant was to collect the nail-clippings from the hands of the appellant and subject them to a forensic analysis. If the skin tissue of the deceased was found present, it would have directly linked the appellant to the crime; if absent, the same would rule out his involvement in the crime.

43. We are conscious of the law, that a defective investigation should not be a ground to let off an accused, provided there is cogent evidence to establish the guilt. But, in the instant case,

the delayed registration of the FIR and the belated investigation, as noted above, has caused a serious prejudice to the appellant and cannot be ignored.

44. The twin circumstance of the appellant having a motive to murder his wife, inasmuch as he was dissatisfied with the dowry, and his presence in the house at 2.00 PM, in the facts and circumstances of the instant case, are insufficient evidence to convict the appellant for the offence of murdering his wife. The explanation by the appellant that he returned to the house at 2.00 PM to take lunch cannot be brushed aside lightly. There is no evidence led by the prosecution that the appellant never left his house for his work. We note that the father of the deceased has deposed that he finalized the matrimonial alliance of his daughter with the appellant because his family owned properties and the appellant was trading in chemicals and was earning a handsome amount. It is apparent that the appellant was a self-employed person. The appellant would be entitled to a presumption that he left his house in the morning, as every self-employed person would do, in connection with the affairs of his business. We re-emphasize the fact, that the prosecution has led no evidence that the appellant had remained present in his house all throughout the day.

45. Pertaining to the reasoning of the learned Trial Judge, that, the appellant could not prove that he had left the house in the morning and had returned to the house at 2.00 PM i.e. has not established the alibi and hence an adverse inference had to be drawn, suffice would it be to note that in the decision reported as AIR 1997 SC 322 Binay Kumar Singh vs. State of Bihar it was observed that it is the basic law in a criminal case that the burden is on the prosecution to prove that the accused was present at the scene of the crime and had participated in the crime. The burden would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of the accused in such cases needs to be considered only when the burden has been discharged by the prosecution satisfactorily, or else, no such need arises. We may only add that the evidence of last seen with the deceased soon before the dead body was found stands on a different footing vis-à-vis evidence of seen at the place of the crime soon after the deceased died. In the decision reported as AIR 1972 SC 922 Khatri Hemraj Amulakh Vs. State of Gujarat the mere presence of the husband in the house soon after the death of the wife and there being no other incriminating evidence was held to be insufficient to sustain the finding of guilt returned by the Court of Sessions and affirmed

by the High Court for the reason there was no evidence of the husband being in the house soon before the wife died.

46. If not more, the appellant would be entitled to the benefit of doubt in the facts and circumstances of the case and as noted above.

47. The appeal is partially allowed. The impugned judgment and order dated 3.7.2008 convicting the appellant of the offence of murdering his wife is set aside. The conviction for the offence punishable under Section 498-A IPC is maintained. The sentence imposed upon the appellant to undergo imprisonment for life and to pay a fine for the offence punishable under Section 302 IPC is set aside. The appellant is directed to set free forthwith if not required in any other case.

48. Copy of this order be sent to the Superintendent, Central Jail Tihar for compliance.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

March 04, 2009
Dharmender