

\$~21.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRIMINAL APPEAL NO.98/2011**

% Date of decision: 13th August, 2012

MOHD.HANIF Appellant
Through Mr. Siddharth Aggarwal & Mr.
Adit S. Pujari, Advocates.

versus

STATE Respondent
Through Ms. Richa Kapoor, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P.GARG

SANJIV KHANNA, J. (ORAL):

Mohd. Hanif by this appeal seeks quashing of his conviction under Section 302 of the Indian Penal Code, 1860 (IPC, for short) by the impugned judgment dated 27th October, 2010 in Session Case No. 21/2008 arising out of FIR No. 199/2008, Police Station, Nand Nagri. The appellant has also questioned the order of sentence dated 30th October, 2010 by which the appellant has been sentenced to imprisonment for life

and fine of Rs.5,000/-. In default of payment of fine, the appellant has to undergo simple imprisonment for six months.

2. The appellant has been convicted for murder of his wife Rozina on the night of 19-20th April, 2008 at their residence A-2/212, Gali No. 2, East Gokalpur, Amar Colony, Delhi.

3. Before we go on to the merits of the case, it may be appropriate to record and state that this appeal was preferred by Mohd. Hanif through Mr. K.K. Tyagi, Advocate. On 17th July, 2012, the appellant-Mohd. Hanif had appeared on production warrant and had stated that Mr. K.K. Tyagi, Advocate was to argue this appeal on merits. As Mr. K.K. Tyagi, Advocate was not present, the appeal was not taken up for hearing on the said date and was adjourned to 6th August, 2012. On 6th August, 2012, Mr. K.K. Tyagi, Advocate was heard at length but as arguments could not conclude, the appeal was adjourned to 7th August, 2012. On 7th August, 2012, Mr. K.K. Tyagi, Advocate did not appear and in the interest of justice, the matter was renotified for 8th August, 2012. On the said date again, Mr. K.K. Tyagi, Advocate did not appear. Mohd. Yaseen, father of the appellant was present in the Court and informed that the said

Advocate had expressed his inability to appear as there was a dispute regarding payment of fee. He requested that a legal aid counsel may be appointed. In these circumstances, Mr. Siddhartha Aggarwal, Advocate, who is on the panel of the Delhi High Court Legal Services Committee, was appointed as Amicus Curiae. We have heard Mr. Siddhartha Aggarwal, Advocate today.

4. It is an undisputed position that the deceased Rozina died a homicidal death. The post mortem report of Rozina has been proved and marked Exhibit PW-5/A. The said post mortem was conducted on 22nd April, 2008 by Dr. Arvind Kumar, who appeared as PW-5. Post mortem started at 11.35 a.m. and it was concluded at 12.20 p.m. on the same day. As per the post mortem report, the deceased had died about 48 hours before due to asphyxia due to ante mortem strangulation by ligature. The deceased also had the following injuries:

“1) Reddish hard grooved parchment like ligature mark present around the neck completely. Ligature mark is running almost horizontally. In midline front of neck, mark is 0.8 cm broad and 7 cm below on left side of neck mark is 1 cm broad and 5 cm below left ear and on right side of neck mark is 0.7 cm

broad and 4 cm below right ear. On back of neck mark is below hairline running horizontally, mark is 8 cm below occipital protuberance and 0.7 cm broad. At places skin folds are present on the marks. On fine dissection of mark, subcutaneous tissue is pale with margins are hyper. On further dissection hemorrhage present in soft tissue and neck muscles below the mark. Hyoid, cricoids and thyroid cartilage are present.

2) Reddish linear abrasion of size 2.1 cm x 0.2 cm present over dorsum of hand below little finger.

3) Reddish linear abrasion of size 1.8 cm x 0.2 cm present over right side of forehead 4.5 cm above right eyebrow and 3 cm from midline.

4) Reddish linear abrasion of size 0.8 cm x 0.2 cm present to right eyebrow.”

5. The next question which arises for consideration is whether the appellant is responsible and had caused the death of Rozina. It is accepted position that the appellant was husband of Rozina and they were residing at the room mentioned above. The prosecution case relies upon the testimony of PW-1, Shabnam. She is the sister-in-law of the accused and the deceased, being the wife of the appellant's brother. PW-1 in her statement had stated that Rozina died on 20th April, 2008. PW-1 had woken up in the morning at 4/4.30 a.m., as she was not feeling well. The appellant was standing in

the gallery, holding his son. The appellant looked sad and the son was crying. On being questioned why he was sad, the appellant asked PW-1 to go inside his room and see what had happened. When PW-1 went inside the room of the appellant, she found that Rozina was lying dead. She cried and shouted and thereafter persons from the neighbourhood gathered there. Somebody made a call to the police and the police reached the spot.

6. Mr. Siddhartha Aggarwal, learned counsel for the appellant has highlighted and drawn our attention to the statement made by PW-1 in the examination-in-chief that the police did not interrogate her. He also drew our attention to the statement made by PW-2, Kalsum, mother of the deceased that they suspected, and Rozina had also told them, that PW-1 had illicit relations with the appellant. Similar allegations were made by PW-7, Shamsheer.

7. Regarding the first contention, it is noticed that PW-1 was reexamined on 1st May, 2010 pursuant to order dated 21st April, 2010 on an application moved by the prosecution. In the re-examination, on 1st May, 2010, PW-1 had stated that her

husband was not present in the house when Rozina had died and had gone to his village in U.P. Further, the appellant was sad as well as nervous. The witness was cross-examined by the Additional Public Prosecutor on certain aspects. She denied that she had been won over by the accused, who was her brother-in-law. In the cross-examination on 1st May, 2010, PW-1 had denied the suggestion that the police had not recorded her statement in the case and she was a planted witness.

8. It is not denied, and it is an accepted position that PW-1, Shabnam was residing in the same property in an adjacent room. Her presence at the spot on the day of occurrence at the property in question is accepted. In the cross-examination of PW-1 no question was put to her and no suggestion was given that she was not present at the spot, i.e., in the property in question. We also take note that the police had received information recorded in DD entry No. 42A (Exhibit PW-15/X) at 5.25 a.m. on 20th April, 2008 from telephone No. 9350101558 that a wife had been killed by her husband. Thereafter, Investigating Officer PW-15, SI Lal Sahab went to the spot and saw dead body of a lady lying on the bed in the room and

observed the ligature marks on the neck and injury mark on her forehead. The said facts are mentioned in Exhibit PW-15/A. The appellant, who was identified as the husband of the deceased lady, met PW-15 at the spot in the morning. We are not referring to Exhibit PW-12/A and the statement of PW-15 as a confession made by the appellant-accused to the police which is inadmissible in evidence under Sections 25 and 26 of the Evidence Act. However, what is relevant and important is that when the police reached the spot early in the morning on 20th April, 2008, the appellant accused was present there in the house. It is also noticeable that the appellant accused had not informed the police but a third person had informed the police about the death of his wife Rozina. PW-12 has proved on record Exhibit PW-12/A scene of crime, visitation report which shows that the said team had visited the spot at about 6.45 a.m. and remained there till 7.15 a.m.

9. The appellant accused in his statement under Section 313 Cr.P.C. in response to question No. 5 had stated as under:-

“Q.5 It is evidence against you that on seeing your wife Rozina lying dead, she started crying and shouting and on hearing her voice

many public persons were gathered there and someone informed the police. What you have to say about it?

Ans. I do not know, however I reached at my house on the day of incident at about 7/7.30 a.m. and at that time police already reached at the spot.”

10. The appellant accused, therefore, does not dispute or deny the position that at 7/7.30 a.m. he was present at the spot. The appellant accused had not given any explanation or reason where he was before 7/7.30 a.m. As per the prosecution, it is clear from the statement of PW-15 that the appellant was present there when they reached the spot. The statement made by the appellant that he reached the spot after the police had arrived is apparently incorrect. PW-14, Constable Mahender in his statement has stated that he had gone to the spot along with PW-15, SI Lal Sahab. The appellant was found present in the house and was interrogated by the Investigating Officer.

11. Having considered the statement of PW-1, we have no reason to disbelieve her or suspect that PW-1 wanted to falsely or wrongly implicate the appellant. The appellant being the husband of the deceased, it was normal and natural for him to be with his wife, i.e., deceased, in their room at night. His

presence early in the morning, when the police had visited the spot, clearly shows that he was present at that time. The appellant has not indicated or stated any alibi or explanation where he had gone if he was not present in his room in the night intervening 19-20 April, 2008.

12. Learned counsel for the appellant has submitted that the testimony of PW-1 should be disregarded in view of the allegations made against PW-1 by PW-2, Kalsum, mother of the deceased and PW-7, Shamsheer, uncle of the deceased. The said witnesses were not eye witnesses to the alleged incident. PW-7 had in his testimony directly implicated and stated that PW-1, Shabnam was having illicit relationship with the appellant and rather she was an accused in the case and not a mere witness. Kalsum, PW-2 had moved various applications in the office of Commissioner of Police, National Commission for Women etc. making allegations against PW-1, Shabnam. It is clear from the statements of PW-2 and 7 that they suspected that Shabnam was equally responsible and may have a hand in the death of Rozina. Their apprehension

and suspicion as relatives of the deceased is understandable. But the police has to act on the basis of evidence and not suspicion or apprehension. Moreover, the said witnesses did not doubt or state that the appellant was not involved and had not committed the said offence. PW-6, Kadir in his statement had stated that he had asked PW-1, Shabnam whether she was not aware of the murder though her room was adjacent to the room of Rozina? It is clear from the statements of PW-2, 3, 6 and 7 that the relationship between the deceased and the appellant was far from cordial and was strained. There were allegations being made against each other. These statements are being relied upon only for this purpose and to this extent.

13. The inquest report PW-4/C, which was recorded by PW-4, Vipin Garg, Sub Divisional Magistrate, Seema Puri, specifically records that in the neck round ligature marks were found and the murder was probably committed by strangulating the deceased with the help of electricity wire, which was found at the spot and was seized vide seizure memo Exhibit PW-14/A. It was urged that no public witnesses were signatories to the seizure memo. This argument does not impress us. Public witnesses normally

do not like to be associated with recovery proceedings. In the present case, photographs of the scene of the crime were taken by PW-9, Constable Sunil Kumar. In his statement he had pointed out that on the site, dead body of a female was lying on the bed and red colour electric wire was also lying near the dead body. Seven photographs were taken by him and marked Exhibits PW-9/X1 to X7. The cooler and the wire can be seen in the photographs marked Exhibits PW-9/X4 and PW-9/X5.

14. Learned counsel for the appellant further submitted that a broken mobile phone was recovered from the spot but the call details of the said mobile phone were not ascertained and placed on record. The mobile phone was sized vide Exhibit PW-15/C. The mobile phone was certainly recovered, but failure to get the call details and place them on record do not materially affect the prosecution case. It has not been explained to us why and for what reason the case of the prosecution should be disbelieved, given the failure to get the call details or place them on record.

15. Learned counsel for the appellant further submitted that there is a discrepancy whether the body of the deceased was

lying on the floor or on the bed when the police, namely, Investigating Officer PW-16, Bacchu Singh, PW-15, SI Lal Sahab, PW-14 Ct. Mahender and PW-12 SI E.S. Yadav reached the place of crime. Whether the body was lying on the bed or on the floor, is a minor issue. The photographs clearly show that the body was lying on the bed when the photograph was taken by PW-9, a member of the crime team.

16. Learned counsel for the appellant has submitted that the viscera report was sent late. PW-16 had stated that the viscera preserved by the doctor was taken into possession vide memo Exhibit PW-14/B and sent to FSL, Rohini through Constable Rajbir. The FSL report received subsequently was marked Exhibit P-X. We notice that Exhibit P-X is not viscera report but it is an FSL report in respect of electrical wire, chunni and one cloth piece which was seized from the spot. After the report was received, another application was moved by the Investigating Officer PW-16 with PW-5 on 4th August, 2008. Thereafter, report Exhibit PW-5/B was given by PW-5 on 8th September, 2008. In this report (Exhibit PW-5/B), PW-5 has clearly mentioned that the injury No. 1 mentioned in the post mortem

report could have been caused by the wire which was produced before him.

17. Another contention raised by the appellant was that there was delay in recording the FIR. DD entry No. 42A (Exhibit PW-15/X) was recorded at about 5.30 a.m. but the FIR was registered at 8.30 a.m. We do not think there is an inordinate or an extraordinary delay in recording the FIR after DD entry was recorded at 5.30 a.m. The police officers, after recording the DD entry, reached the spot and conducted investigation. The crime team reached the spot and took photographs. The crime team were at the site of crime till 7.15 a.m. (see Exhibit PW-12/A). PW-4, Vipin Garg, SDM, Seema Puri also reached the spot and conducted the inquest proceedings. Only after visiting the spot, the rukka was prepared and was sent to the police station for registration of the FIR. Keeping in view the said facts, we do not think there is any unexplained delay in recording the FIR.

18. The next aspect which we have to keep in mind is the conduct of the appellant-accused himself. As noticed above, we have come to the conclusion that the appellant accused was present at the scene of the crime, i.e., the room, along with his wife

on the said night. The post mortem report shows that the death had taken place between 11-12 p.m. on the night of 19th April, 2008. The conduct of the appellant-accused thereafter in not informing the police, not taking his wife for treatment and keeping quiet shows that he has been rightly implicated and convicted for the said offence. In case the appellant accused was not involved, he would have certainly taken steps to inform the family members living in the same building and his in laws, i.e., parents of the deceased. He did not do so. On the other hand, it was only in the morning at 5.30 a.m. that a phone call was received in the Police Control Room from a third person stating that a husband has killed his wife at the spot in question. The police got activated and after investigation, the appellant-accused was arrested. The death in the present case had taken place at night in the room in which the appellant was also present. No one else was present with the accused at that time. In this case there was no third person, who could have possibly committed the said act. It is not the case of the appellant that the deceased had committed suicide. The photographs and place of occurrence did not indicate the said possibility. Facts to the contrary or those absolving the appellant, if any, were within the

special and specific knowledge of the appellant. The appellant had not pleaded, stated or explained the said special facts. Section 106 of the Evidence Act, 1872 is applicable and it was the responsibility of the appellant to at least explain the special exculpatory facts exonerating him or showing his innocence i.e. there was involvement of any third person or the deceased had committed suicide. We would like to reproduce the following observations of the Supreme Court in ***Trimukh Maroti Kirkan versus State of Maharashtra***, (2006) 10 SCC 681:-

“18. The question of burden of proof where some facts are within the personal knowledge of the accused was examined in *State of W.B. v. Mir Mohd. Omar* [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516] . In this case the assailants forcibly dragged the deceased, Mahesh from the house where he was taking shelter on account of the fear of the accused and took him away at about 2.30 in the night. Next day in the morning his mangled body was found lying in the hospital. The trial court convicted the accused under Section 364 read with Section 34 IPC and sentenced them to 10 years' RI. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for murder charge. The accused had not given any explanation as to what happened to Mahesh after he was abducted by them. The learned Sessions Judge after referring to the law on circumstantial evidence had observed that

there was a missing link in the chain of evidence after the deceased was last seen together with the accused persons and the discovery of the dead body in the hospital and had concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act and laid down the following principle in paras 31 to 34 of the reports: (SCC p. 392)

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

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

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is

disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct, etc. in relation to the facts of the case.

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

19. Applying the aforesaid principle, this Court while maintaining the conviction under Section 364 read with Section 34 IPC reversed the order of acquittal under Section 302 read with Section 34 IPC and convicted

the accused under the said provision and sentenced them to imprisonment for life.

20. In *Ram Gulam Chaudhary v. State of Bihar* [(2001) 8 SCC 311 : 2001 SCC (Cri) 1546] the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they had murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the court to draw a different inference.

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of T.N. v. Rajendran* [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] (SCC para

6); *State of U.P. v. Dr. RavindraPrakash Mittal* [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] (SCC para 39 : AIR para 40); *State of Maharashtra v. Suresh* [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] (SCC para 27); *Ganesh Lal v. State of Rajasthan* [(2002) 1 SCC 731 : 2002 SCC (Cri) 247] (SCC para 15) and *Gulab Chand v. State of M.P.* [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] (SCC para 4).]

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of H.P.* [(1972) 2 SCC 80 : 1972 SCC (Cri) 635 : AIR 1972 SC 2077] it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* [(1992) 3 SCC 106 : 1993 SCC (Cri) 435] the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for

the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. RavindraPrakash Mittal* [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of T.N. v. Rajendran* [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that

there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.”

19. Reference can also be made to the decision of the Supreme Court in ***State of Rajasthan versus Kashi Ram***, (2006) 12 SCC 254, wherein it has been held as under:

“**22.** In *Sahadevan v. State* [(2003) 1 SCC 534 : 2003 SCC (Cri) 382] the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of 5-3-1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of 6-3-1985. In the background of such facts the Court observed: (SCC p. 543, para 19)

“Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever.”

23. It is not necessary 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 especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have 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 resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down 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. The principle has been succinctly stated in *Naina Mohd., Re.* [AIR 1960 Mad 218 : 1960 Cri LJ 620]”

20. From the aforesaid discussion, the following aspects become clear:

- (i) The appellant was with his wife in the flat/room at A-2/212, Gali No. 2, East Gokalpur, Amar Colony, Delhi during the night of 19-20th April, 2008.
- (ii) The wife of the appellant Rozina died because of asphyxia due to strangulation by ligature probably between 11-12 p.m. on 19-20th April, 2008.
- (iii) There was ligature mark on the neck of the deceased. The deceased also had four ante mortem injuries on her body, which disclose physical violence.
- (iv) The appellant did not inform or tell anyone about her homicidal death till the next morning when for the first time he spoke to PW-1, Shabnam.
- (v) The appellant did not inform the police about the death and murder of Rozina. The appellant did not take his wife Rozina to the hospital or to a doctor for treatment/medical aid.

- (vi) A third person had made a telephone call to the Police Control Room and DD entry No. 42A Exhibit PW-15/X was recorded at 5.30 a.m.
- (vii) When the police team, including the Investigating Officer PW-16, PW-15, PW-14, PW-12 and the SDM PW-4 visited the spot the appellant accused was present at the said spot. The crime team had visited the spot at 6.45 a.m.
- (viii) The relationship between the appellant accused and the wife Rozina was strained and antagonistic. In other words, motive is also there.
- (ix) The police had seized electricity wire from the room, which was used for the commission of offence as has been opined and stated in the subsequent post mortem opinion Exhibit PW-5/B.

21. Keeping in view the aforesaid facts, it is held that chain of circumstances, when examined together and in a cumulative manner, point the finger of guilt and show that commission of offence was by the appellant. They also

exclude the possibility of any other third person being involved in the said offence.

22. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is dismissed. Conviction and the sentence awarded to the appellant is confirmed.

SANJIV KHANNA, J.

S.P. GARG, J.

**AUGUST 13, 2012
VKR**