

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

Date of Decision: 4th March, 2014

+ **CRL.A. 207/2000**

JODHPAL

..... Appellant

Through: Mr. S.D.S. Rathore, Advocate

versus

STATE

..... Respondent

Through: Ms. Richa Kapoor, Additional
Public Prosecutor for the State

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CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This appeal arises from the conviction of the appellant Jodhpal on the charge u/s 304 (Part-I) IPC and 201 IPC in Sessions Case No. 120/1997 in FIR No. 496/96, in terms of the impugned judgment of learned ASJ dated 12th April, 1999. The appellant has been sentenced to imprisonment for life and to pay a fine of Rs.2000/- under Section 304 (Part-I) IPC and in default of payment of fine to undergo RI for one year. He was further sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/-, in default of payment of

fine, to undergo three months RI for offence u/s 201 IPC. Both the sentences were to run concurrently.

2. Succinctly stated, the case of the prosecution is as follows:-

3. On 24th October, 1996, at about 7:25 pm, one Ganga Ram, father of the deceased lodged a report with the police station Kalyan Puri which was recorded as DD No.13A. It was disclosed by Ganga Ram that his daughter Seema aged about 25 years was married to accused Jodhpal about 12 years ago according to Hindu Rites. After marriage, Jodhpal used to maltreat his daughter and used to quarrel with her after consuming alcohol. On that day, his wife had gone to see her daughter where his grandson Sonu, S/o Ashok met her and informed that Seema had been stabbed with knife by the accused. On coming to know about this fact, he came to see his daughter at Trilokpuri where he found her dead. On receipt of this DD, ASI Sobran Singh along with Constable Jitender Kumar reached at house No.3/150, Trilokpuri where he found the dead body of the deceased. The accused produced the death certificate of the deceased. Since the death had occurred in suspicious circumstances, he prepared inquest report and got the *post-mortem* of the dead body conducted. After

post-mortem, the dead body was handed over to the father of the deceased. ASI Sobran Singh recorded statement of Sonu on which endorsement Ex. PW11/H was made and FIR Ex. PW6/A was registered against the accused. In his statement, Sonu had disclosed that he had been staying at the house of his Aunt (*bua*) Seema for the last one month in order to look after her child Kishan. 5-6 days back, her *bua* had returned home after finishing her duties. In the meantime, his *fufa* Jodhpal came and demanded money for consuming liquor. Seema declined but he forcibly snatched money from her. After some time, he came back and inflicted knife blow on the abdomen of his *bua*. He also gave beatings to him. Thereafter his *fufa* took his *bua* to the hospital for treatment. He got scared. His *fufa* did not inform his grandparents about the hospitalization of his *bua* where she expired. The dead body was brought by his *fufa* to the house and he was going to take her for cremation. In the meanwhile, his grandparents came and he informed them about inflicting of the knife injury on the abdomen of his *bua* by his *fufa*. Thereupon, his grandfather called the police who took the dead body with them. After *post-mortem*, dead body was handed over to them. His *bua* has been killed by his *fufa*

Jodhpur by inflicting knife injury and he has concealed this fact from his family members. He prayed for action.

4. During the course of investigation, site plan Ex. PW11/J was prepared. Accused was arrested. At his instance, the weapon of offence was recovered. The statements of the witnesses were recorded. After completing investigation, charge sheet was submitted against the accused.

5. In order to substantiate its case, prosecution examined 11 witnesses. All the incriminating evidence was put to the accused while recording his statement under Section 313 Cr.P.C. wherein he denied the case of prosecution and alleged false implication in this case. He further stated that he was residing along with Seema in premises No.5/111-112 Trilokpuri. However, he denied that Sonu was residing with them. According to him, his relations were cordial with his wife. On 21st October, 1996, his wife was coming from upper portion with washed utensils and had accidentally fallen with the utensils on the ground floor and some sharp object was lying against which his wife struck and received injuries on lower portion of abdomen. He took her to GTB Hospital and got her treated there. He had informed his

in-laws through his brother Jagdish regarding admission of Seema in GTB Hospital and his in-laws had visited Seema in GTB Hospital. Due to negligence of the doctor in not giving proper treatment, she developed septic and fever and died. Since his parents and brothers and their families were residing at 3/150, Trilok Puri, therefore, after the death of Seema, he brought the dead body to that house and information was sent to his in-laws. Subsequently, out of sheer vengeance, his in-laws concocted false allegations by tutoring Sonu to depose against him. Sonu was never residing with him or his wife on or before 21st October, 1996 and whatever he had stated to the police or in the Court was on account of tutoring at the instance of in-laws. Other witnesses were related to his in-laws or under their influence, and therefore, they have made false statements against him. He pleaded his innocence and alleged false implication in this case.

6. Although, initially he stated that he does not want to lead defence evidence, however, later on, he examined three witnesses in support of his defence.

7. Learned Trial Court relied upon the testimony of PW1 Sonu and convicted the appellant. Feeling aggrieved, the present appeal has

been preferred by the appellant.

8. We have heard Sh. S.D.S. Rathore, Advocate for the appellant and Mr. Sunil Sharma, learned Additional Public Prosecutor for the State and have perused the record.

9. It was submitted by the learned counsel for the appellant that there is gross delay in lodging the FIR, inasmuch as, the alleged incident is dated 21st October, 1996 whereas the FIR was registered on 25th October, 1996 on the basis of statement of Sonu. His statement was recorded without oath. Reference was made to the initial statement made by him to the police and his deposition in the Court and it was submitted that the same was a tutored version. There is material contradiction in his testimony. Moreover, he is an interested witness and depositions of remaining witnesses are hearsay. Conviction cannot be based on the testimony of this child witness. The alleged weapon of offence was neither produced before the doctor for opinion nor sent to FSL. No sketch of the knife was prepared and even the doctor could not say whether the injuries were homicidal, accidental or suicidal. As such, prosecution has failed to prove its case beyond reasonable doubt. The benefit of doubt is required to be

given to the accused. As such, he be acquitted of the offence alleged against him.

10. Rebutting the submissions of learned counsel for the appellant, it was submitted by learned Additional Public Prosecutor for the State that there is an eye witness account of the incident in the shape of testimony of PW-1 who has deposed in the most natural and straight forward manner and has stood the test of cross-examination. His testimony finds corroboration from the testimony of PW-3. The weapon of offence was recovered at the instance of the accused. The act of the accused and his relatives in not informing the family of the deceased about the incident and then making preparation for cremation of the deceased fortifies the prosecution case. The Trial Court findings are cogent, correct and are based on truthful appreciation and the evidence led by the prosecution. The accused has rightly been convicted by the Trial Court and the appeal deserves to be dismissed.

11. We have given our thoughtful consideration to the respective submissions of learned counsel for the parties and have perused the record.

12. The star witness of prosecution is PW1 Sonu on whose statement, FIR was registered. At the time of incident, the witness was 10 years old and when he came to depose in the Court, he was 12 years of age. Before recording the statement of the witness, certain questions were put by the learned Trial Court in order to ascertain the competency of the witness and as to whether he could be administered oath or not and it was opined that the witness does not understand the sanctity of oath. As such, his statement was recorded without oath.

13. Before scrutinizing the testimony of solitary eye witness to the incident, who was a child aged about ten years, let us have a glance at the legal position concerning the testimony of a child witness.

14. Indian Evidence Act, 1872 (in short the 'Evidence Act') does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease- whether of mind, or any other cause of the same Kind. A child of tender age

can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer J in *Wheeler v. United States* 159 U.S. 523. The evidence of a child witness is not required to be rejected per se; but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. (Vide *Surya Narayana v. State of Karnataka* 2001 (1) Supreme 1).

15. In *Dattu Ramrao Sakhare v. State of Maharashtra*, (1997) 5 SCC 341, it was held as follows:

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored".

16. While appreciating the evidence of a child witness of extreme tender age, it would be desirable for the Court to keep in mind the principle that although there is no bar in accepting the uncorroborated testimony of a child witness yet prudence requires that court should

not act on the uncorroborated evidence of a child whether sworn or unsworn. While dealing with this aspect of the case, their Lordships of the Privy Council in *Mohamed Sugul Esa v. The King*, AIR 1946 PC 3, observed as follows (at pages 5 & 6) :--

"In the Indian Act there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence a Court can act upon it, corroboration, unless required by statute, goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law."

17. Again in *Panchhi Vs. State of UP* (1998) 7 SCC 177 it was held that evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law. [vide *Prakash vs. State of MP*, (1992) 4 SCC 225].

18. Adverting to the case in hand, a perusal of the initial statement Ex.PW1/A and the deposition of the witness in the Court reflect that there are material improvements. In the initial statement Ex.PW1/A to the police, Sonu disclosed that on the fateful day, the accused

demanded money from his *bua* for the purpose of drinking liquor and when she declined, then he snatched money from her. After some time he came to the house and lifted a vegetable knife and inflicted injuries on the lower part of the abdomen of his *bua*. He gave beatings to him as well. He took his *bua* to the hospital. As such, through this statement of Sonu it is revealed that demand for money for drinking liquor was made only once and immediately after stabbing *bua* she was taken to the hospital by the accused. However, in his deposition before the Court, he has stated that he used to reside at the house of her *bua* in order to look after her son Kishan who was aged about 4 years as Seema used to go to work as maid servant in the *kothis*. There had been frequent quarrels between his *bua* and *fufa*. His *fufa* used to ask for money from his *bua* for drinking liquor and his *bua* used to refuse to give money to him. Thereupon accused used to beat his *bua* and snatch money. On one night, he saw the accused forcibly snatching money from his *bua* and giving beatings to her with danda and kicks. He further deposed that on one day, during noon, again the accused asked money from his *bua* and snatched some money and left the house. Again, he came and demanded money

which was refused by his *bua* as she was to purchase ration and to pay rent of the house. Upon this, accused lifted a knife from nearby and gave a knife blow on the abdomen of his *bua*. Some flesh came out of his *bua*, thereupon, he informed brother of the accused who used to reside in the neighbourhood and informed him about the incident. Brother of the accused came and took his *bua* to his house. One doctor was called who stitched her wound. However, her *bua* started vomiting. Thereupon, she was removed from the house. However, he could not say whether she was moved to the hospital or somewhere else. His grandmother Omwati came to the house and enquired about his *bua*, then, he informed her about the incident. His grandmother Omwati called the police when accused was taking the dead body for cremation. Police recorded his statement Ex.PW1/A which bears his thumb impression. As such, there are material improvements in the testimony of this witness.

19. Further, Sonu was a nephew of the deceased. As per the case of prosecution he had come to reside with the accused and deceased for last one month in order to look after her minor child Kishan. However, accused in his statement under Section 313 Cr.P.C. has

denied that Sonu was residing with them in their house. As such, it was incumbent upon the prosecution to prove that this witness was residing with the accused and deceased in their house and therefore had an occasion to witness the incident. Neither PW Ganga Ram, father of the deceased, nor PW Rakesh, brother of the deceased, have deposed that Sonu was residing in the house of the accused. Parents of Sonu have not been examined to prove that they had sent Sonu to the house of his *bua* to look after her small child. ASI Sobram Singh has deposed that he had prepared the site plan Ex.PW11/J on the pointing out of Sonu, however, he admitted in cross-examination that neither it has been mentioned in the site plan that it was prepared at the instance of Sonu nor his position has been shown in the site plan as to from where he had witnessed the incident. As such, it is not established beyond reasonable doubt that Sonu was residing in the house of the accused, as such, his presence at the spot on the fateful day is not established.

20. Moreover, Sonu has deposed that the relation between the accused and the deceased were not cordial. According to him, the accused used to give beatings to his *bua* for demanding money for

consuming liquor. However, this part of his testimony does not find corroboration from any other material on record, inasmuch as, the Investigating Officer of the case has admitted that in their statement recorded on 24th October, 1996, Ex.PW3/A and Ex. PW2/A, Ganga Ram, father of the deceased and Ramesh, brother of the deceased did not allege anything incriminating against the accused. Neither the father nor the brother of the deceased have deposed anything against the accused. Examination-in-Chief of Ganga Ram was conspicuously silent regarding any ill-treatment meted out to the deceased by the accused. It is only in cross-examination that he has deposed that prior to the incident, his daughter used to tell that she was occasionally beaten by the accused. Brother of the accused, PW4 Rakesh also does not depose anything regarding the strained relations between the two. Mother of the deceased Omwati has not been examined by the prosecution. Investigating Officer of the case has admitted that he did not make any inquiry from the neighbours to ascertain the relationship between the accused and his wife, as such, it is not proved on record that relation between the accused and his wife were strained or that she used to be tortured by the accused in order to part with money for

drinking liquor.

21. On the other hand, if the incident, as alleged, had taken place the accused would not have made efforts to save his wife. However, record reveals that after Seema sustained injuries, a private practitioner was called, and thereafter, she was taken to a private nursing home and on being advised by the private nursing home, she was taken to GTB Hospital by the accused himself. This plea taken by the accused find support from the testimony of his own brother DW2 Jagdish and DW3 Dr. Prem Arora who brought the medical record from GTB Hospital. Even the Investigating Officer has admitted that investigation revealed that accused himself had taken his wife to GTB Hospital. Inquiries also revealed that the accused used to remain with his wife in GTB Hospital till the time she remained there. After her death in the hospital, he brought her back to the house. According to Dr. Prem Arora it was not a medico-legal case. If a foul play had been noticed by the hospital authorities, then they themselves would have informed the police about the admission of Seema in hospital. Record brought by Dr. Prem Arora does not reflect that the patient was not conscious at any point of time. Therefore, if

something abnormal had been found, the doctors would have taken extra precaution to enquire from the patient herself, but there is nothing of that sort on the record. After her death, the death certificate was also given to the accused who brought the deceased to his house and was throughout available. Even on 26th October, 1996 when police came to arrest him, he was present at his house and on seeing them also he did not try to run away. The aforesaid conduct of the accused, to some extent, lend credence to the plea taken by him that he was innocent.

22. Moreover, according to Sonu, on the night of the incident he and Kishan remained in the house of his *bua*. On the next day his grand-mother Omwati came and took him and Kishan at Harkesh Nagar where he informed them about the incident. Even after coming to know about the incident the family members of the deceased did not make any effort to inform the police. It was only after the death of the deceased and after the post mortem examination of the deceased was conducted that statement of Sonu was recorded. Statement of Sonu was read over to his grandmother and grandfather by the police and not to him. Therefore, since Sonu was with the

parents of the deceased when his statement Ex.PW1/A was recorded by the police, possibilities of tutoring the witness and recording his statement Ex.PW1/A at their instance cannot be ruled out. On an overall view of the aforesaid circumstances, it will not be safe to convict the accused on the solitary testimony of Sonu unless it finds corroboration from other attending circumstances.

23. The other piece of evidence relied upon by prosecution is the recovery of weapon of offence at the instance of accused. It is the case of the prosecution that on 26th October, 1996 at the instance of PW4 Rakesh, accused was arrested by the police. He made a disclosure statement Ex.PW4/B stating therein that he got the knife recovered from House No. 5/111-112 Trilokpuri. Thereafter, he led the police party to his house and took out the knife from the *parchatti* of the first floor of the house. The knife was taken into possession vide recovery memo Ex.PW4/C. The recovery is alleged to have been affected in the presence of two independent witnesses, namely, PW4 Rakesh and PW5 Ramesh. So far as PW4 Rakesh is concerned, he has not supported the case of prosecution in this regard, as according to him, he was called by the police at Police Station Trilokpuri on the

next day and there he was shown a knife and was asked to identify the same. But he refused to identify the same. He further deposed that knife Ex.P-1 was the knife which was shown to him in the Police Station. He denied the suggestion that accused took out the knife from the Parchatti of the house or that in his presence the knife was taken into possession. Even PW5 Ramesh has denied the presence of any other independent witness at the time of recovery of the knife. However, he has admitted that the recovery of knife was affected at the instance of the accused in his presence. He is an independent witness, therefore, there is no plausible reason as to why he should be dis-believed.

24. The question for consideration, however, is whether this was the knife which was alleged to have been used in the commission of crime. In view of the discussion made hereinafter, here also prosecution failed to establish that this was the weapon of offence:-

- (i) Sonu was the solitary eye witness to the incident and this witness was not shown the knife in order to ascertain whether this was the same knife with which accused is alleged to have inflicted injuries on the lower part of abdomen of the deceased.

(ii) The knife was not having any blood stain and as such it was not sent for any scientific test.

(iii) It is an admitted case of prosecution that knife when recovered was 'bent'. ASI Sobram Singh has admitted that witnesses had informed him that the knife was in the same bent position at the time of occurrence. According to PW8-Constable Subhash, no sharp injury could be caused by such knife.

(iv) Dr. L.T. Ramani who conducted the post-mortem examination was not shown the knife in order to obtain his opinion as to whether injury could have been caused with this knife.

25. The totality of the circumstances goes to show that prosecution has miserably failed to prove that knife Ex.P-1 was the weapon of offence which was allegedly used in the commission of the crime.

26. Last but not the least, it is not even established that Seema met a homicidal death. The case of prosecution is that the deceased met a homicidal death whereas case of accused is that Seema sustained accidental injuries.

27. In order to prove the fact that Seema met a homicidal death, the prosecution has relied upon the eye witness account of the incident

and recovery of weapon of offence, which in view of the discussion made above, has failed. The last piece of evidence relied upon by the prosecution is the post-mortem report Ex.PW9/A given by Dr. L.T. Ramani who conducted the post-mortem on the dead body of Seema. Dr. L.T. Ramani has deposed that on examination, he found following injuries on the person of the deceased:-

- (i) Stitched wound 6" long on the lower part front of abdomen between umbilicus and pubic region (operational)
- (ii) Tiny abrasion 0.2 x 0.2 cm. On the right lower part of neck.
- (iii) Stitched wound $\frac{3}{4}$ " long vertical on the right iliac region of abdomen.
- (iv) Tiny punctured wound (0.3 cm.) on the left side middle part of neck.

28. It was opined that injuries were ante-mortem. Injury to the neck and small intestine was caused with a penetrating weapon. Injury to abdominal viscera was sufficient to cause death in the ordinary course of nature. Death was due to septicaemia and peritonitis consequent to injury to small intestine. In cross-examination, he deposed that he was not sure about the weapon of offence alleged to have been used in this case. The same was not shown to him and even if the same was shown to him he would not be in a position to give any opinion as to whether the injuries on the

abdomen of deceased could have been caused by knife or not because the wounds were stitched and were surgically interfered with. As regards the punctured wound on the neck region, he could not say if it was a surgical procedure or due to some injury caused.

29. The case of the accused, on the other hand, is that Seema sustained injuries accidentally when she was coming downstairs along with washed utensils. Some sharp object was lying against which she struck and received some injury on lower portion of the abdomen. According to him, due to negligence of the doctor in not providing her proper treatment, Seema died. It is the admitted case of the parties that Seema was under treatment at GTB hospital. It was incumbent upon the prosecution to have examined the concerned doctor who gave treatment to her but no such effort was made. It was accused who initially examined DW1 Sh. R.S. Sharma, Record Clerk, GTB Hospital who brought the record pertaining to Seema who was admitted in the hospital on 21st October, 1996 and expired on 24th October, 1996. As per the record, it was not a medico-legal case. He proved the death summary Ex.DW1/A, Death Certificate Ex.DW 1/B and case sheet Ex. DW1/C running into 23 pages. Thereafter he

examined DW-3 Dr. Prem Arora from GTB Hospital who brought the complete medical record pertaining to patient Seema who was admitted in the hospital on 21st October, 1996. According to him, as per the history given at the time of admission of patient, she had trauma, lower abdomen with “sharp piece of iron”. She had got CLW stitched by some private practitioner. From private practitioner, she was taken to Malhotra Nursing Home on 21st October, 1996 where she was diagnosed acute peritonitis and referred to GTB Hospital by the Nursing Home. No history of medico-legal case was given either by the patient or attendant. She was operated upon on 22nd October, 1996 on account of acute peritonitis at GTB Hospital and she expired on 24th October, 1996. The cause of death was “perforation peritonitis with septicaemia.” He further deposed that septic developed during the treatment to the patient. Had this septic not developed in the body, the death was unlikely. Since the patient was not attended or operated at initial stages, there is possibility of patient developing septic in her wound. In pursuance to a court question, the witness deposed that on seeing the history sheet, **no opinion can be expressed as to whether the injuries were homicidal, accidental or**

suicidal.

30. It is pristine rule of law that the burden of proving its case beyond reasonable doubt is always on the prosecution. An accused is presumed to be innocent till his guilt is proved to the hilt. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. In the instant case, there is no categorical finding by Dr. L.T. Ramani who conducted post-mortem on the body of deceased that death was homicidal. On the other hand, Dr. Prem Arora from GTB Hospital could not give any opinion as to whether the injuries were homicidal, accidental or suicidal. In fact, according to both the doctors, cause of death was same-perforation peritonitis with septicaemia. That being so, it is not established beyond reasonable doubt that Seema met a homicidal death.

31. The other charge against accused under Section 201 IPC is that he tried to disappear evidence by taking the dead body of his wife for cremation with intention to screen from legal punishment. In order to

substantiate this plea, PW3 Ganga Ram has deposed that accused and his family members concealed the fact as to where Seema was hospitalised and, therefore, he and his son were searching for Seema in hospitals. They also went to SDN hospital but could not find her there. After searching his daughter in the hospitals, he and his wife Omwati came to House No.3/150 Trilokpuri and found that accused and his relatives were preparing to take the dead body of Seema for cremation. After leaving his wife at the spot, he went to Police Station Trilokpuri and informed them about the facts. However, his testimony does not find corroboration from his own son Rakesh, who nowhere deposed that he along with his father went in search of his sister. Omwati has not been examined by prosecution to prove this fact. Moreover, if the testimony of this witness is believed to be true, then nothing prevented him or his family members from informing the police about some foul play when it is the case of prosecution itself that on the very next day of the incident, they had come to know from Sonu that Seema has been stabbed with a knife by the accused. However, till her death on 24.10.1997, no information was given to the police at all. This also raises a suspicion about the case set up by

the prosecution that accused tried to destroy evidence by taking the dead body for cremation secretly without informing relatives of the deceased.

32. On the other hand, it is the case of the accused that when Seema met with accidental injury by falling on some sharp iron *patti*; on the advice of Doctor, he took her to GTB hospital and information was also sent to parents of Seema, who also visited GTB hospital. DW-2 Jagdish, brother of the accused has deposed on the same lines. He has testified that on receipt of information that his *bhabhi* had received some injuries, he went to her house at Trilokpuri and then took Seema along with his brother to the doctor. Seema was vomiting. As such, the doctor advised his brother to take his wife to GTB hospital. Accused Jodhpal took his wife to GTB hospital and he went to his in-laws house to inform them about the incident. He further deposed that parents of his *bhabhi* accompanied him to GTB hospital and during the period of her hospitalisation for 3-4 days, parents of Seema had been visiting her at the hospital. That being the situation, prosecution has failed to prove that the accused tried to disappear evidence by taking the dead body of Seema for cremation

without informing her parents, as such offence u/s 201 IPC is not duly proved.

33. The cumulative effect of the aforesaid discussion is that neither the prosecution could prove the charge u/s 304 Part I IPC nor u/s 201 IPC.

34. However, before parting with, there are certain other aspects of the matter which deserves mention.

35. In criminal trial, one of the cardinal principle is registration of earliest information as FIR. As observed by Hon'ble Supreme Court in *Lalita Kumari vs. Govt. Of Uttar Pradesh and Ors.*, (2014) 2 SCC 1, the object sought to be achieved by registering the earliest information as FIR is inter alia two fold:- One, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment, etc., later. In case there is delay in lodging the FIR, the Court looks for plausible explanation for the delay in lodging the report. The reason is obvious. Delay sometimes afford opportunity to the complainant to make deliberation upon the

complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming to the police or before the Court, the Court also views the allegations with suspicion and looks for satisfactory explanation. If no such explanation is found, the delay is treated as fatal to the prosecution case.

36. In *Thulia Kali v. The State of Tamil Nadu*, (1972) 3 SCC 393, it was held that the delay in lodging the first information report quite often results in embellishment as a result of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but also danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

37. In *Ram Jag and Ors. v. The State of U.P.*, (1974) 4 SCC 201, the position was explained that whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay can be condoned if the witnesses have no motive

for implicating the accused and/or when plausible explanation is offered for the same. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness or authenticity of the version of the prosecution.

38. In the case of ***Jai Prakash Singh v.State of Bihar & Anr.***, 2012 CRI.L.J.2101 the Supreme Court held:

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant’s version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

39. In the instant case, the incident is alleged to have taken place on 20.10.1997. The FIR was registered only on 25.10.1997, as such there is gross delay in lodging of the FIR. That being so, it is to be seen whether any explanation has been given by the prosecution. Record reveals that Seema used to work as a maid servant in Kothis. Her mother Omwati also used to work as a maid servant in kothis in

the same locality. According to PW3 Ganga Ram, Omwati was informed by the kothiwalas in whose house Seema was working that she was not reporting to work for the last two days and, as such, Omwati was asked to enquire as to why Seema was not coming to work. As such, Omwati went to the quarter at Trilokpuri but did not find Seema over there. Thereafter, she went to quarter No.150, Gali No.3, Trilokpuri where she met all the family members including Sonu. She enquired from Sonu who informed her that Seema had been stabbed and had been taken at some unknown destination. Omwati brought Sonu and Kishan with her and informed Ganga Ram about the same. Thereafter, it is his case that he and his son had been searching for Seema in various hospitals but could not find her and ultimately when he came to house No. 150, Gali No. 3, Trilokpuri at that time he found that accused and his relatives were preparing to take the dead body of Seema for cremation. Thereupon, he went to police station and informed the police. It is pertinent to note that Omwati was the most material witness, however, for reasons best known to the prosecution, she was withheld and as such, an adverse inference has to be drawn against the prosecution. Besides the same,

according to Sonu, on the very next day of incident, he was taken by Omwati to his house. Even the Investigating Officer of the case has admitted in cross-examination that during the course of interrogation of witnesses and other relatives of the deceased, he came to know that Sonu had gone on that very day to Naraina with Ganga Ram and Rakesh to their house. If that is so, there is absolutely no explanation as to why despite coming to know from Sonu that Seema had been stabbed by the accused, police was not informed immediately.

40. The learned Trial Court did not consider the delay to be fatal in the instant case by presuming that the family members may be under the impression that the injuries sustained by Seema may not be grave in nature and she may survive and therefore, they did not rush to police station to lodge a complaint against the accused. This reasoning of the learned Trial court is not borne out from the record inasmuch as neither the brother nor the father of the deceased gave any explanation as to why the police was not informed after they had come to know from Sonu that Seema has been stabbed with knife by the accused when according to Ganga Ram, the accused and his family members were not disclosing the truth to them and, therefore,

he had been visiting various hospitals but could not find Seema anywhere. Even at that juncture, police was not informed suspecting some foul play. Under the circumstances there is unexplained delay in lodging the FIR which is fatal to the prosecution case.

41. The manner in which investigation has been conducted by ASI Sobran Singh suffers from such serious lapses that with utter disgust and dismay, we express our utmost displeasure. It was a serious offence concerning the death of a young woman, yet the investigation was assigned to PW11-Assistant Sub-Inspector Sobram Singh. Time and again various guidelines have been given by the Hon'ble Supreme Court as well as by this Court that in such serious offences, investigation is required to be conducted by an officer, not less than the rank of Inspector, however, in the present case investigation was conducted by an officer of the rank of ASI. The investigation is not only faulty but also reflects the callous and casual approach adopted by the police officer in conducting the investigation which is detailed as under:-

- (i) According to him, on 24th October, 1996 DD No. 13A, Ex. PW11/A was entrusted to him for investigation. This DD was

recorded on the statement of Sh. Ganga Ram, father of the deceased, wherein he stated that his daughter got married to Jodh Pal about 12 years ago. After marriage, his son-in-law used to maltreat his daughter Seema and after consuming liquor, used to quarrel with her. On that day, his wife had gone to meet his daughter, however, his grandson, namely, Sonu informed her that his *fufa* had caused injuries to her *bua* with a vegetable cutter knife. On coming to know about this fact he went to Trilokpuri to see his daughter, however, Seema was found dead. It is not clear as to why FIR could not be registered on the basis of this statement made by Ganga Ram and instead DD No. 13A was recorded.

(ii) Be that as it may be, on receipt of this DD ASI Sobran Singh went to the spot along with father of the deceased and found the dead body lying outside the house. According to him, he prepared inquest papers Ex.PW11/B and sent the dead body to mortuary for post-mortem examination. Despite the fact that this DD was recorded on 24th October, 1996 at 7:25 p.m., which makes a mention that Ganga Ram was informed by

Sonu that accused inflicted knife injuries on the lower portion of her abdomen, yet no effort was made by the ASI to immediately record the statement of Sonu. He admits that on 24th October, 1996 Ganga Ram came to Police Station at 7:30 p.m. but did not inquire from him about Sonu nor asked him to produce Sonu in the Police Station, nor did he himself go to record his statement.

(iii) According to him, post mortem could not be conducted on the same day and it was conducted on 25th October, 1996. Sonu met him in the mortuary and at that time he recorded his statement Ex.PW1/A at 4:15 pm, made endorsement Ex.PW11/H and then got the FIR Ex.PW6/A registered. Therefore, despite coming to know that such a heinous crime has taken place, callousness on the part of ASI is writ large from the fact that inspite of the fact that serious allegations were made by Ganga Ram, no FIR was registered on 24th December, 1996, nor any effort was made to record the statement of Sonu or to get the FIR registered promptly.

(iv) According to him, on 24th October, 1996 when he visited

the spot he interacted with several persons, but did not examine any neighbour to ascertain relations between the accused and his wife.

(v) After alleged recovery of knife at the instance of the accused, he did not prepare even the sketch of the knife which could show the measurement of the knife in order to ascertain whether injuries could have been possible with the knife which was allegedly recovered at the instance of the accused.

(vi) He admitted that he did not produce the knife Ex.P-1 to Dr. L.T. Ramani in order to seek his subsequent opinion regarding possibility of injuries with the recovered weapon of offence. Not only that, knife was recovered in bent condition and he came to know from Sonu that it was in the same condition on the date of incident, but no effort was made to ascertain from the doctor whether injuries could have been caused by such bent knife.

(vii) The deceased was admitted in GTB Hospital. For the first time Investigating Officer visited GTB Hospital on 29th November, 1996 and moved an application for taking into

possession the medical papers of deceased Seema. According to him, inspite of writing the application, the hospital authorities did not give him the complete photocopies of the medical treatment given to the deceased. He contacted the Record Incharge of GTB Hospital to give him the attendance register, bed-sheet and other medical papers and treatment given to Seema and to examine the doctor, however, he admitted that he did not contact the Chief Medical Officer of GTB Hospital personally to make a request for making him available the complete medical records.

(viii) During the entire investigation, he did not come to know the name of the doctor who had attended and operated the deceased in GTB Hospital. He admitted that he did not contact any doctor at GTB Hospital to show them the copy of death certificate produced before him by the accused or to examine the doctor and get their opinion regarding the history of the case or cause of death.

42. All this reflects the slipshod manner in which investigation has been carried out by the Investigating Officer of the case. The net

result is the acquittal of the accused. Recently, Hon'ble Supreme Court in *State of Gujarat v. Kishanbhai*, 2014(1) SCALE 177, took a note of serious lapses committed by the investigating agencies in not carrying out its most solemn duty of conducting fair, honest, flawless and scientific investigation into any crime. The relevant observations and directions given in the said decision are reproduced as under:-

"17. Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the accused-Respondent innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long drawn litigation, spanning over a decade, or more. The expenses incurred by an accused in his defence can dry up all his financial resources - ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

18. Numerous petitions are filed before this Court, praying for anticipatory bail (under Section 438 of the Code of Criminal Procedure) at the behest of persons apprehending arrest, or for bail (under Section 439 of the Code of Criminal Procedure) at the behest of persons already under detention. In a large number of such petitions, the main contention is of false implication. Likewise, many petitions seeking quashing of criminal

proceeding (filed under Section 482 of the Code of Criminal Procedure) come up for hearing day after day, wherein also, the main contention is of fraudulent entanglement/involvement. In matters where prayers for anticipatory bail or for bail made under Sections 438 and 439 are denied, or where a quashing petition filed under Section 482 of the Code of Criminal Procedure is declined, the person concerned may have to suffer periods of incarceration for different lengths of time. They suffer captivity and confinement most of the times (at least where they are accused of serious offences), till the culmination of their trial. In case of their conviction, they would continue in confinement during the appellate stages also, and in matters which reach the Supreme Court, till the disposal of their appeals by this Court. By the time they are acquitted at the appellate stage, they may have undergone long years of custody. When acquitted by this Court, they may have suffered imprisonment of 10 years, or more. When they are acquitted (by the trial or the appellate court), no one returns to them; what was wrongfully taken away from them. The system responsible for the administration of justice, is responsible for having deprived them of their lives, equivalent to the period of their detention. It is not untrue, that for all the wrong reasons, innocent persons are subjected to suffer the ignominy of criminal prosecution and to suffer shame and humiliation. Just like it is the bounden duty of a court to serve the cause of justice to the victim, so also, it is the bounden duty of a court to ensure that an innocent person is not subjected to the rigours of criminal prosecution.

19. The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct, that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gathered during investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigors of criminal prosecution. By following the above procedure, in most criminal prosecutions, the concerned agencies will be able to successfully establish the guilt of the accused.

20. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was

wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent.

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for.”

43. In view of the serious lapses noted above in the conduct of investigation, we direct the concerned Joint Commissioner of Police to initiate departmental action against the Investigating Officer of the case and the other erring officials.

44. For the foregoing reasons, in our opinion, the impugned order of conviction and sentence cannot be sustained. The appeal is accordingly allowed. Appellant is acquitted of the offence. His bail bonds are discharged. Trial Court record be sent back.

(SUNITA GUPTA)
JUDGE

(KAILASH GAMBHIR)
JUDGE

MARCH 04, 2014
rs/as/AK