

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

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Reserved on: 07.03.2023

Decided on: 10.05.2023

+ **CRL.A. 1362/2019**

JASPAL

..... Appellant

Represented by: Mr.Anwesh Madhukar, Mr. Pranjal
Shekhar, Ms. Prachi Nirwan & Mr.
Yaseen Siddiqui, Advocates.

versus

STATE

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J :-

1.0 Vide this appeal, the appellant is assailing the judgment dated 30.08.2019 (**'impugned judgment'** in short) passed by Ld. ASJ, (Special Judge-NDPS), Dwarka Courts, New Delhi, whereby the appellant was convicted for the murder of his wife; and order on sentence dated 03.09.2019, whereby the appellant was sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code, 1860 ('IPC' in short) with fine of Rs.50,000/-, in default to undergo simple imprisonment for three months.

2.0 Briefly stating, case of the prosecution is that on 27.08.2001, at around 5.40 am, PW-2 Radhey Shyam came to Police Station Dwarka and informed ASI Yashpal Singh (PW-10) that '*mere saath wale kamre me kiraydar hai, ki biwi Monu kamre ke farsh par padi hai, aur aisa lagta hai ki mari hui hai, aur kamre ka taala band hai. Maine use khidki se dekha hai, police bheji jaye*'. On this information, PW-10 recorded DD no. 7A dated 27.08.2001 (Ex. PW-10/A). Copy of the same was entrusted to PW-7 Ins. Rajesh Maurya, who along with PW-6 HC Ramesh, PW-9 HC Jagbir accompanied PW-2 Radhe Shyam to the spot i.e. Plot no. 45, Khasra no. 7/12, 20 Point Program Plots, village Bagdola, Dwarka, at about 5.45 am. PW-18 SHO Ins. Umesh Singh, who was also given the aforesaid information/DD also reached the spot along with staff. PW-7 Inspector Rajesh Maurya peeped inside the room through the window and on his directions, PW-6 HC Ramesh broke open the lock of the room with the help of Iron rod. On breaking open, police team found that Smt. Monu was lying dead inside the room and noticed ligature marks around her neck. A thread was also found lying near the door of the room. Crime team was requisitioned. Place of occurrence was inspected and photographed by the crime team. Statement of PW-2 Radhey Shyam (Ex. PW2/A) was recorded, wherein, he stated that '*...main uprokt plot no. 45, gaon Bagdola me pichle 12 din se Shyam Sunder ka kiraydaar hoon. Isi plot me, mere saath wale kamre me Jaspal s/o Babu Ram jo mere hi gaon ka rahne wala hai, bhi kiraye par apni patni Monu aur 8 mahine ki bachi ke saath rehta tha. Pichli raat 8 baje jab main apne kaam se vapas plot par aaya to Jaspal ko sharab pite hue dekha aur uski patni use peene se mana kar rahi thi jo isi baat ko lekar Jaspal Monu ko peetne laga. Maine bhi use mana kiya ki aapas me mat lada karo. Thodi hi der baad ve dono*

apne kamre me chale gye aur main bhi apne kamre me chala gya, lekin ve dono phir bhi aapas me unchi-unchi awaz me jhagra karte rahe. Jaspal Monu ko baar-baar dhamki de raha tha ki tujhe jaan se maarunga. Karib 11 baje raat ko main aur meri patni khana kha kar so gye aur praatah karib 5 baje sokar utha to dekha Jaspal ke kamre ko bahar se taala laga hai. Maine phoran khidki se dekha to paya ki Monu farsh par padi hai aur aisa laga ke veh mari hui hai. Mere awaz dene par bhi veh nahi uthi. Main phoran thane me suchna dene aa gaya aur police mujhe lekar mauke par pahunchi. Jaspal aur uski 8 maah ki bachi dono hi gayab hai. Mere samne police ne taala todkar Monu ko dekha aur use mrit paya hai. Mujhe yakin hai ki Jaspal apni patni ko maar kar gayab ho gya hai...'

2.1. On the aforesaid statement, *rukka* was prepared by Insp. Umesh Singh (PW-18) and was sent to the Police Station through PW-6 HC Ramesh for registration of FIR (Ex. PW8/A). Insp. Umesh Singh PW-18 sealed and seized the articles found on the body of the deceased (vide seizure memo Ex. PW-7/A), thread (Ex. P-2) found near the door of the room (vide seizure memo Ex. PW-7/B) and broken lock (Ex. P-1) (vide seizure memo Ex. PW-2/B). Site plan (Ex. PW-18/B) of the spot was also prepared. Dead body was identified by PW-2 Radhey Shyam and his wife Sunita PW-3 vide their statements Ex. PW-18/E and Ex. PW-18/F, respectively. Postmortem of the deceased was got conducted vide postmortem report (Ex. PW-4/A) by PW-4 Dr. Lalit Kumar, who opined that the death was caused due to asphyxia following strangulation caused by ligature; and that the ligature correspond with the thread (Ex. P1) produced by police. After postmortem, PW-4 handed over the blood sample and clothes of the deceased in sealed

pullandas along with sample seal to PW-18 Inspector Umesh Singh, which were seized vide seizure memo Ex. PW-7/D. On 31.08.2001, dead body of the deceased was disposed of/cremated as unclaimed at Punjabi Bagh crematorium vide proceedings Ex. PW-7/E. Exhibits of the case were deposited in the Mal-khana.

2.2. Thereafter, during the course of investigation, PW-18 Ins. Umesh Singh made search of the appellant/accused, recorded statements of the witnesses, got prepared the scaled site plan Ex. PW-11/A through Draftsman/PW-11/SI Madan Pal. Since the appellant/accused was absconding and avoiding arrest, NBWs and thereafter process under Sections 82/83 Cr.P.C was got issued and finally, the appellant/accused was declared proclaimed offender vide order 21.02.2002 passed by the Ld. M.M., Patiala House Courts, New Delhi. On completion of investigation, charge sheet against the appellant/accused was filed as proclaimed offender.

2.3. Later, on 01.09.2015, the absconding appellant/accused was apprehended and arrested vide arrest memo Ex. PW-13/A by PW-13 SI Basant Kumar from Village Nagla Daman, PS-Sikanderpur Vaish, District-Kashganj, U. P. under Section 41.1 (c) Cr. P. C and a kalandra U/s 41.1 (c) Cr. P. C. was prepared. Information regarding arrest/apprehension of the appellant/accused was sent to PS Dwarka, which was recorded vide DD no. 17-A (Ex. PW-5/A) by PW-5 ASI Birginia and the appellant/accused was arrested in the present case on 21.09.2015.

3.0 In order to prove its case, the prosecution examined 19 witnesses.

4.0 On incriminating evidence being put to the appellant/accused, he vide his statement under Section 313 Cr.P.C admitted that in the month of August 2001, he was residing in a room at plot no. 45, Khasra no 7/12, 20 Points Programme Plots, Village Bagdol, New Delhi with his wife Smt. Monu (since deceased) and a daughter aged about one year; and that he was working in Neel Kanth Gas Agency, Sector-9, Dwarka, New Delhi; and PW-2 Sh. Radhey Shyam was also working in the same Gas Agency and was residing in the room adjoining to his room. However, he denied other allegations and expressed his ignorance about the same and stated that he was told by his neighbour Sh. Radhey Shyam that his wife had died. He also stated that he had gone to his village and has been falsely implicated by the police in this case. Appellant chose to lead evidence in his defence, but subsequently did not examine any witness.

5.0 Learned counsel for the appellant/accused argued that the learned ASJ failed to appreciate that the prosecution's prime witness of last seen/PW-2 has turned hostile. Further, the prosecution has failed to prove the thread allegedly found from the room to be the weapon of offence. Prosecution could not even prove motive on the part of the appellant/accused. The appellant has duly explained his conduct that he was in his village. Thus, the prosecution has utterly failed to prove its case beyond reasonable doubt.

6.0 *Per contra*, the ld. Prosecutor argued that the appellant admittedly was living with his wife in the said room and was with her on 26.08.2001, as has come in the consistent testimonies of PW-2 Radhe Shyam, his neighbour. Since that night, the appellant went missing. Thus, it was for the appellant to

explain where he went and what happened to his wife, the deceased. Rather, the appellant's abscondence after the crime, is another link in the circumstances against the appellant. She also argued that vide medical evidence/post mortem report and testimony of PW-4 Dr. Lalit Kumar, it has come on record that the deceased died homicidal death by asphyxia by strangulation, for which no explanation has come forth from the appellant.

7.0 We have duly considered the submissions made by both the sides.

8.0 This is a case based on circumstantial evidence. PW-2 Radhey Shyam deposed that he worked in Neelkanth Gas Agency, Sector-9, Dwarka, New Delhi and was residing in a room along with his family as a tenant in plot belonging to Shri Shyam Sunder at village Bagdolla. The appellant/accused was also working in the aforesaid gas agency and was residing with his wife Monu/deceased and a daughter aged about one year in the adjoining room in the said plot. On 27.07/08.2001 (which he clarified to be 26.08.2001, in cross examination by the learned Prosecutor), the appellant had returned from duty at about 5-6 pm and started quarrelling with his wife. He asked the appellant not to quarrel with his wife and thereafter, the appellant and his wife went to their room and he also went to his room. At about 2 am when he woke up and came out of his room, he saw that the appellant's room was locked from outside. He peeped inside from the window of the appellant's room and saw that his wife Monu was lying on the floor and the appellant/accused and his daughter were missing. Since it appeared that the appellant's wife was dead, he along with his wife (PW-3) went to the police station to give this information. Police came to the spot and the lock of the appellant's room was broken. On opening the room, the appellant's wife was

found dead. His statement Ex. PW2/A was recorded by the police. As PW- 2 resiled from his previous statement, he was cross examined by the Id. Prosecutor. In his said cross examination, PW-4 denied that he had seen the appellant consuming liquor and his wife Monu/the deceased objected to the same; and the appellant/accused had then threatened to kill her. He was confronted with his statement Ex. PW2/A where the said facts are recorded. He denied that he is deposing falsely in order to save the appellant, who is resident of his village. He also denied that he had seen one thread lying near the dead body of the deceased Monu and the same was seized by the IO in his presence. He however admitted that lock of the room of the appellant was sealed and seized in his presence vide seizure memo Ex. PW2/B. He even duly identified the said lock (Ex. P1). He also admitted that the appellant and his wife had gone to their room at about 11 pm; and that he had visited the police station after 5 am.

8.1 Though PW-2 did not fully support the prosecution case, his aforesaid version remained uncontroverted as in cross examination, he was only asked about the nature of relationship of the appellant with his wife (deceased). To which, PW-2 replied that they were living happily. No doubt, PW-2 stated that the appellant/accused and his wife were living happily. But significantly, PW-2's testimony that on that fateful day i.e., 26.08.2001, on return from office, the appellant/accused had started quarrelling with his wife/deceased; and that he (PW-2) had asked the appellant not to quarrel, remained uncontroverted as no suggestion to the contrary was put to PW-2. Thus, it has come on record that the appellant/accused had quarreled with his wife/the deceased in the evening of 26.08.2001.

9.0 PW-3 Sunita, wife of PW-2 also deposed that they and the appellant (whom she duly identified) along with his wife Monu and children (son aged about 10-12 years and a daughter aged about one year) resided in the adjoining rooms in village Bagdolla, New Delhi . Appellant and his wife were living happily. As she resiled from her previous statement, she was cross examined by the Id. Prosecutor. In her said cross examination, PW-3 admitted that on 27.08.2001, in the early morning, she had seen the room of the appellant was locked from outside; and that the appellant/accused was missing from his room in the intervening night of 26/27.08.2001. She further admitted that on 27.08.2001, police had arrived and had broken open the lock of the appellant's room and on opening of the same, she saw that the appellant's wife Monu was lying dead on the floor of the room. She however denied that the appellant was in the habit of drinking and quarrelling with his wife; and that even on 26.08.2001 she had seen the appellant/accused consuming liquor in the evening and was quarrelling with deceased Monu and threatening to kill her. She denied that she was deposing falsely since the appellant/accused is the resident of the village to which her husband belonged. PW-3 was not cross examined by the appellant's counsel and therefore, her testimony remained uncontroverted.

10.0 Testimonies of PW-2 and PW-3 are corroborated by PW-10 ASI Yashpal Singh, who was posted as Duty Officer at PS Dwarka on 27.08.2001. He deposed that on that day at about 5:40 am, complainant Radhey Shyam (PW-2) informed him at the police station that Monu (deceased), wife of the appellant who resided in the adjoining room, was dead and was lying on the floor. He reduced the said information in writing

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vide DD no. 7A (Ex. PW10/A). He also stated that being an old record, the said *roznamcha* has been destroyed by the order of Senior Officers and produced copy of the said order Mark A. In his cross examination, he denied that the complainant had not given any such information and that the said DD has been manipulated at the instance of IO. DD no. 7A indeed was an old record, it having been recorded on 27.08.2001 and the witness PW-7 stepped into the witness box after about eighteen years, on 01.03.2018.

11.0 Be that as it may. PW-7 Inspector Rajesh Maurya deposed that DD no. 7A was entrusted to him for necessary action. Accordingly, he along with HC Ramesh Chand (PW-6), HC Jagbir Singh (PW-9) and Radhey Shyam (PW-2) reached the spot. PW-2 pointed to a room which was locked from outside. He peeped from the window of the said room and found one lady was lying on the floor and there was no movement in her body. In the meantime, Inspector Umesh Singh SHO, PS Dwarka (PW-18) also reached along with his staff. Lock of the said room was got broken open and on entering the room, the lady lying on the floor was identified by PW-2 as Monu, wife of the appellant. He also testified that there were ligature marks on the neck of the deceased and a thread was also found lying near the door of the room. He also deposed about crime team being called, recording of statement of PW-2, registration of FIR, seizure of thread and broken lock vide seizure memos Ex PW7/B and Ex PW2/B, respectively, dead body being shifted to DDU Hospital, getting post mortem conducted. He duly identified thread (Ex P2) and lock (Ex P1) during his testimony. He stood by his deposition in his cross examination and denied that Radhey Shyam PW-2

is the suspect. Nothing of substance could be extracted in his cross examination so as to reflect on his credibility.

12.0 PW-6 SI Ramesh Chand and PW-9 ASI Jagbir Singh who accompanied PW-7, HC Rajesh Maurya also deposed on the same lines. Both the witnesses stood by their deposition in cross examination. PW-6 categorically denied that he never visited the spot and that he did not notice any ligature mark on the neck of the deceased. Learned counsel for the appellant himself suggested to PW-7 that the appellant was not present at the scene of crime at that time, which PW-7 admitted.

13.0 Testimony of PW-6, PW-7 and PW-9 finds corroboration in the testimony of IO/Insp. Umesh Singh/PW-18, who also deposed on the same lines. He testified that on being informed about the incident by the duty officer at about 5:45 am, he along with staff reached the spot. The said house was found locked from outside. He peeped through the window and found a lady lying on the floor of the house. He got broken open the lock of the said house through HC Ramesh Chand (PW-6) with the help of an iron rod. Thereafter, they entered the room and found a lady in dead condition and also noticed some ligatures marks on the neck. Crime team was called who inspected the spot and took photographs. He recorded statement of Radhey Shyam (PW-2), prepared *rukka* Ex. PW18/A and sent the same to PS through HC Ramesh Chand (PW-6) for registration of FIR. He also seized a thread found lying on the spot, which was suspected to have been used for strangulation of the deceased. Same was sealed with the seal of RK and seized vide seizure memo Ex. PW7/B. The broken lock was also sealed and

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seized vide seizure memo Ex. PW 2/B. Site plan Ex. PW18/B was prepared. Dead body of the deceased was taken to DDU Hospital, application for autopsy of the deceased Ex. PW18/C was made. Post mortem of the dead body was got conducted and after post mortem, the blood sample and the clothes of the deceased along with sample seal, were handed over by the doctor which were seized by him vide seizure memo Ex. PW7/D. The thread was returned by the doctor in a pullanda sealed with the seal of hospital which was seized vide seizure memo Ex. PW7/C. PW-18 duly identified the lock (Ex. P1) and the thread/ligature material (Ex. P2). PW-18 in his cross examination by the Id. counsel for the appellant denied that the appellant/accused has been falsely implicated though no incriminating evidence could be found against him. He also denied that the appellant was available at his native place and was deliberately not arrested by the police; and that the case was not properly investigated.

14.0 Testimonies of PW-2 and PW-3, thus stand further supported by PW-6, PW-7, PW-9 and PW-18 and also by medical evidence/testimony of PW-4 Dr. Lalit Kumar. PW-4 Dr. Lalit Kumar testified that he had conducted the post-mortem examination of the deceased on 27.08.2001 and had given his report Ex.PW4/A. Relevant portion of post-mortem report (Ex.PW4/A) reads as under :

“1.Body of Monu Age 22 yrs W/o Sh. Jaspal

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3.Body sent by S.H.O. Umesh Singh PS Dwarka

4.Body identified by Const. Jasbir 914/W & S.H.O.

5. Date & Hour of Receipt of inquest Papers & dead body 27/8/2001 at 2.15 pm

6. Date & Hour of **Starting Autopsy 27/8/2001 at 2.15 PM**

7. Date & Hour of **Concluding Autopsy 27/8/2001 at 3.25 PM**

8. **BRIEF HISTORY** (As per inquest Papers) Alleged H/O Found dead in room locked from outside

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Following injuries are seen on body.

1. **Abrasion** (cressentic & semilumar) (0.3 cm x 0.1 cm) three in number **resembling like nail abrasion are seen on upper most part of chest in front near mid line more on to (Rt) side of chest**
 2. Abrasion (2.5 cm x 0.5 cm) at lower most part of (Lt) buttock.
 3. **One ligature abrasion at lower border of thyroid cartilage 4 cm above the suprasternal notch in front of neck & is placed horizontally. It is seen (11.5 cm x 0.2 cm) on (Lt) side of neck from mid line in front. It is 4 cm x 0.2 cm on (Rt) side of neck & after that it is seen absent. It is well defined & depressed into the skin. Base of the ligature mark is grooved and margins are raised. It looks like dry, hard, parchment like. It is reddish brown or chocolate in colour.**
 4. **One ligature abrasion mark in the upper most part of the neck in front and which placed horizontally. This mark is 3.5 cm x 0.2 cm on the left side of the neck from the midline in front. After that, it is absent. While it is 2.8 cm x 0.2 cm on right side of the neck and after that it is seen defused. Based of this mark is grooved and margins are raised. It is reddish brown on chocolate in colour. It is dry, hard, parchment like.**
 5. **One ligature abrasion mark in front of the neck placed on right side and run horizontally alongwith the lower border of right side ramus of mandible. It is 5.8 cm x 0.2 cm and is 1 cm below vide right ramus of mandible. It is reddish brown or chocolate in colour. The base is grooved and margins are raised and abraded.**
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8. Scalp –Hemorrhage under scalp (6 cm x 4 cm) is seen on posterior parietal region on (Rt) side near midline.
- ...
10. Base of Skull – ... hemorrhage in posterior part of Rt parietal region of (Rt) cerebral hemisphere corresponding to injury in the scalp.
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12. Mouth, tongue – Posterior part of tongue is seen bruised & swollen.
13. Neck, larynx, thyroid and other neck structure – Extravasation of blood into the subentianaly tissues under the ligature mark & adjacent tissue. Neck muscles are seen contused. # of (Lt) corner of hyaid bone.
Larynx is seen congested & fractured mucus.

C. CHEST (THORAX)

.....

4. Trachea and bronchi – Trachea is seen congested & contain the fractured mucus.

...

6. Lungs – Lungs are seen congested & show hemorrhage spots on surface of both lungs. On entire dark Blood is seen coming out. Empty scimitars is seen on surface of lungs.

7. Heart and pericardial sac – (Rt) side of Heart is seen filled dark coloured fluidy blood & (Lt) side of heart is empty

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D – ABDOMEN

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3. Stomach and content – Thick paste like undigested food 100 ml with abnormal smell.

...

6. Liver, gall bladder, biliary passages – congested

7. Spleen – Congested

8. Kidney, renal pelvis, ureter - congested

1-TIME SINCE DEATH – approximately 14 to 15 hrs

J-OPINION : The cause of death to best of my knowledge is :- Strangulation

OPINION

All injuries are ante mortem and are of same duration. All ligatures marks are also ante mortem & are caused by an ligature which is correspond with ligature which is produced by police at time of post mortem examination. Death is due to asphyxia following strangulation caused by ligature. ”

14.1 PW- 4 deposed that he had observed the aforesaid injuries on the deceased's body and in his opinion all the injuries were ante mortem and were of same duration. All ligature marks were also ante mortem and were caused by a ligature corresponding with the ligature produced by the police at the time of post mortem examination. Death was due to asphyxia following the strangulation caused by the ligature. Time since death was approximately 14-15 hours. The only suggestion which was put to PW-4 in his cross examination was that he prepared a false report at the instance of IO which was categorically denied by PW-4. In view of PW-4's testimony,

there is hardly any merit in the argument of the Id. Counsel for the appellant that the prosecution has failed to prove the thread recovered from the spot to be the weapon of offence. Be that as it may. Even if the said piece of evidence is ignored for a while, the same does not impact the prosecution case in any manner in the light of above evidence.

14.2 As per post mortem report, the post mortem was started at 2:15 pm and concluded at 3:25 pm on 27.08.2001. The time since death has been reported to be 14-15 hours approximately. Thus, the deceased died somewhere around 12:30 am on the intervening night of 26/27.08.2001.

15.0 In view of the above, there is no merit in the argument of the learned counsel for the appellant/accused that testimony of PW-2, the only witness of last seen, who is partly hostile and PW-3 being totally hostile, hardly support the prosecution version. Even the argument of learned counsel for the appellant that testimony of PW-2 is not trustworthy in view of the improvement made by him in his deposition over the DD no. 7A (Ex. PW10/A) and his statement Ex. PW 2/A, lacks merit. Suffice it to state that DD no. 7A records in brief, the information given by PW-2 Radhey Shyam regarding the deceased having been seen lying on the floor of the room while the room was locked from outside. Once the police arrived and it was confirmed that the appellant's wife was dead, the IO recorded his statement Ex. PW2/A, wherein PW-2 gave the happenings of the previous day. The said information could not have been expected to be detailed in the DD no. 7A. Thus, it cannot be said that PW-2 made improvement in his statement

Ex. PW2/A. More so, in view of the consistent and cogent deposition of PW-2 corroborated by other evidence, as noted above.

16.0 It would also be pertinent to note here that when the aforesaid incriminating evidence was put to the appellant/accused during his statement under 313 Cr.P.C, the appellant admitted (Q1 and Q2) that in August 2001, he along with his wife Monu/the deceased and a daughter aged about one year was residing in a room adjoining the room of PW-2 and PW-3 in plot no. 45, Khasra no. 7/12, 20 Points Programme Plots, Village Bagdola, New Delhi; and that he worked with Neelkanth Gas Agency, Sector 9 Dwarka, where PW-2 worked. The appellant admittedly was not present in the room which was found locked from outside, when dead body of his wife (deceased) was noticed on 27.08.2001. Further, the appellant himself stated (Q29) that he had gone to his village and was told by his neighbour Radhey Shyam/PW-2 that his wife had died. The appellant however did not state anything as to when did he leave for his village and why and under what circumstances, leaving his wife alone in a rented accommodation.

16.1 In this respect, PW-18 Inspector Umesh Singh, deposed that the appellant/accused was absconding and could not be arrested. He got issued NBWs and thereafter, a process under Sections 82/83 Cr.P.C, as the appellant/accused could not be traced. Even thereafter, the appellant/accused could not be traced and was declared proclaimed offender. He categorically denied that the police did not try to trace the appellant/accused though he was very much available at his native place and was deliberately not arrested by the police. Though, PW-18 could not recollect the exact date when the

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appellant was declared Proclaimed Offender and stated that the same is a matter of record. Deposition of PW-18 finds corroboration in the testimony of PW-12 SI Niranjana Lal. PW-12 deposed that in the year 2002, while he was posted as Head Constable at PS Dwarka, he was given the process under sections 82/83 Cr.P.C. against the appellant/accused Jaspal Singh, who was absconding. He visited the appellant/accused's Village Nagla Daman, PS-Sikanderpur Vaish, District-Kashganj, U. P. and submitted his report in the concerned court; and his statement was recorded and then the appellant/accused was declared a proclaimed offender. PW-12 was not cross-examined. Further, PW-13 SI Basant Kumar has deposed that as the appellant/accused had been declared a Proclaimed Offender, he was apprehended by him (PW-13) on 01.09.2015 from Village Nagla Daman, PS-Sikanderpur Vaish, District-Kashganj, U. P. under Section 41.1 (c) Cr. P. C and a kalandra U/s 41.1 (c) Cr.P.C was prepared and IO PW-18 was informed who collected the copies of DDs no. 55B (Ex. PW18/F3), DD no. 29B (Ex. PW18/F4), DD no. 14A (Ex. PW18/F5), DD no. 17A (Ex. PW18/F6), DD no. 12 (Ex. PW 18/F7), DD no. 13 (Ex. PW18/F8) and DD no. 25 (Ex. PW18/F9), DD no. 24 (Ex PW18/F10) and DD no. (Ex. PW18/F11) from him. The appellant/accused was thereafter arrested in this case vide arrest memo Ex.PW13/A. PW-13 was also not cross-examined by the appellant. Thus, testimonies of PW-12 & PW-13 have remained uncontroverted.

16.2 In his statement under Section 313 Cr.P.C, (Q21) regarding his apprehension/arrest on 01.09.2015 by PW-13 SI Basant Kumar from his village Nagla Daman, District Sikanderpur West, UP under Section 41

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Cr.P.C and subsequent arrest in the present case vide arrest memo Ex. PW13/A and providing of relevant DD entries and kalandara by PW-13, the appellant simply stated that it is a matter of record.

16.3 In view of the evidence on record, it is established that the appellant/accused absconded from home soon after the crime. The act of abscondence on his part has not been satisfactorily explained by the appellant even in his statement under Section 313 Cr.P.C. He simply stated that he had gone to his village but has not assigned any reason for leaving for his village suddenly and that too overnight alongwith his infant daughter. The same rules out the hypothesis of innocence and calls for drawing of an adverse inference against the appellant/accused. (*Sahib Hussain alias Sahib Jan vs. State of Rajasthan, 2013 SCC OnLine SC 370*)

17.0 In view of the above evidence, prosecution has been able to establish that:

(i) the appellant along with his wife Monu/ the deceased was living in a room adjoining the room of PW-2 and PW-3 in plot no. 45, Khasra no. 7/12, 20 points program plot, village Bagdolla New Delhi;

(ii) on 26.08.2001, the appellant had returned from work at about 5-6 pm and started quarreling with his wife, the deceased. On which PW-2 intervened and asked the appellant not to quarrel with the deceased. The appellant along with his wife/deceased went to his room at about 11 pm. Thus, the appellant was last seen with the deceased at about 11 pm;

(iii) on the same/intervening night (of 26/27.08.2001) at about 2 am, the appellant's wife was found lying dead and the appellant/accused and his daughter were missing from the room, which was locked from outside;

(iv) as per post mortem report Ex PW4/A, the deceased died somewhere around 12:30 am on the intervening night of 26/27.08.2001. And the cause of death was asphyxia following strangulation caused by ligature which has been opined to correspond with the ligature (thread Ex. P1) found from the appellant's room;

(v) thus, on 26.08.2001 the appellant was last seen entering his room with his wife (deceased) at about 11 pm and the deceased died a homicidal death approximately within 1 ½ hours of the same in the said room

17.1 In view of the above, in terms of Section 106 Indian Evidence Act, 1872, the burden shifted to the appellant to explain the facts which were within his special knowledge, i.e., as to what happened during this short period of less than two hours on 26.08.2001 and how the deceased died. In *Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10 SCC 681*, Supreme Court held:

“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

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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”

18.0 The appellant has failed to offer any explanation much less cogent explanation in this respect. Strangely enough in his statement under Section 313 Cr.P.C, (Q29) the appellant stated that he was informed by PW-2 Radhey Shyam that his wife had died. Neither has he stated as to when was he informed about his wife’s death nor has he uttered a word as to what he did after coming to know about the death of his wife. These facts points towards the appellant’s guilt and is an additional link which completes the chain (*Krishna Mahadev Chavan V. State of Maharashtra, 2021 SCC OnLine Bom 191; in Re. Naina Mohd. AIR 1960 Mad 218*)

19.0 Learned counsel for the appellant argued that it has come in the testimony of PW-3 that the appellant and his wife/the deceased were living happily. Thus, the prosecution has failed to establish any motive on the part of the appellant for

commission of the offence. Suffice it to state that absence of motive on the part of the appellant/accused is not always fatal to the case of the prosecution (*Shivaji Genu Mahite vs. State of Maharashtra, (1973) 3 SCC 219* and *State of U.P. vs. Kishanpal, (2008) 16 SCC 73*) In view of the evidence which has come on record, the appellant was last seen with the deceased and has failed to explain how she died; and other chain of circumstances clearly connect the appellant/accused to the crime. Therefore, merely because the prosecution has not demonstrated motive on the part of the appellant/accused to kill the deceased does not dent the prosecution case in any manner.

20.0 In view of the above, we find no infirmity or illegality in the impugned judgment and order on sentence. Same therefore, call for no interference.

21.0 Appeal is accordingly dismissed.

22.0. Copy of the judgment be uploaded on the website and be also sent to the Superintendent Jail for updation of record and information to the appellant.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 10, 2023