

IN THE COURT OF MANIPUR

AT IMPHAL

Cril.Appeal 12 of 2017

Patel Rameshore Baburao, aged about 32 years, Convict No. C- 17250, confined in Yerwada Central Prison, Pune-6, Maharashtra, Circle- B Yard, Pin-411006, S/o Babu Rao of Undangaon Village, P.O. Undangaon, P.S. Aijanta, District Aurangabad, Maharashtra.

... APPELLANT/ ACCUSED

-Versus-

The State of Manipur, represented by the Principal Secretary (Home), the Government of Manipur, Imphal.

...RESPONDENTS

BEFORE

HON'BLE THE CHIEF JUSTICE MR.D. KRISHNAKUMAR AND

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Appellant	:	Mrs. N. Elizabeth, Advocate [HCLSC]
For the Respondent	:	Mr. RK. Umakanta PP, Mr. W. Niranjit, DyGA
Date of Hearing	:	06.02.2025
Date of Order	:	21.05.2025

JUDGEMENT& ORDER [CAV]

A. GUNESHWAR SHARMA, (J):

[1] The present Criminal Appeal is filed under section 374(2), 382, 383 Cr.P.C. 1973, against the "impugned judgement" and order passed by the then Learned Sessions Judge, Manipur West (now, Imphal West) on 24-6-2013 in Sessions Trial Case No. 12 of 2010. Ref-FIR 1(02)2010 Henglep P.S. U/s 302 IPC by virtue of which the Appellant was convicted for the offence under Section 302 IPC and awarded imprisonment for life and the appellant was undergoing sentence in Sajiwa Jail, Manipur, India. However, on application made by the appellant, he was reciprocally transferred from Manipur to Maharastra State to serve out his sentence in the Yerawada Central Prison, Pune-6, as he is the resident of Undangaon Village P.O Undangaon, District Aurangabad in Maharashtra.

Fact of the case

[2] The Appellant Patel Rameshore Baburao was arrested by the Henglep Police personnel on the charge of murdering his wife Sarla Patel. On 18-02-2010 on the information received from one Naik Subedar (JCO) Shiv Singh who lodged a written report with OC Henglep PS stating that in the night of 17-2-2010 at about 1.45 a.m. Rfn. No. G/5002428 AR, Patel Rameshore Baburao murdered his wife Sarla Patel at the battalion family Quarter No.2 at Aina/Mulhoichin. Charge Sheet was submitted by the Henglep PS, Churachanpur on 06-04-2010. Prosecution have examined nine (9) witnesses. The learned Sessions Court in case no. 12 of 2010 passed a judgment on 24-06-2013 where the appellant was convicted for the offence under section 302 IPC and awarded life imprisonment.

[3] Being aggrieved the present Appellant, who is now lodged at Yerwada Central Prison, Pune after shifting from Manipur Central Jail, Sajiwa filed this

Criminal Appeal praying for setting aside and quashing the impugned Order dated 24-06-2013 passed by Learned Sessions Judge, Manipur West (now, Imphal West) on 24-6- 2013 in Sessions Trial Case No. 12 of 2010, Ref-FIR 1(02)2010 Henglep P.S. U/s 302 IPC.

[4] Findings by the trial Court & Depositions:

(1) Complainant captain (Major) Amitesh Kashyap was examined as PW-1.

(A) He is the adjutant for the commandant of the 2nd AR Bn. Hq. at Aina/Mulhoichin, Churachandpur District, Manipur at the relevant time 18/02/2010 at about 5.15 am, Naik Subedar.

(B) According to him (JCO) Shiv Singh informed him on internal telephone that the accused Patel Rameshore Baburao killed his wife Sarla Patel in the family quarter of the battalion Hq. He rushed immediately to the place and made inquiries of the incident and learnt that the accused had killed his wife by strangulating her to death at around 4 am in the morning of 18/02/2010. The accused person was placed in the custody of the unit quarter guard. He informed the police of Henglep PS about the incident through their rear JCO at Churachandpur and also sent a written FIR-report. The said report is exhibited as Ext-P/1. The police personnel of Henglep PS came to the place of Occurrence at about 10 am and carried out spot inquiry and conducted inquest examination over the death body in his presence. He has also stated that Sr. Medical officer and Dy. Commandant Dr. Amand Swaroop certified that Mrs. Sarla Patel was death and he forwarded the willingness certificate for the post mortem examination of the death body and exhibited the same as Ext-PI2. He further instructed the JCO to hand over the accused Patel Rameshore Baburao to the

Police. The police party took the dead body by vehicle of the AR and the accused person was handed over to the police on the following day i.e. on 19/02/2010.

(2) Rifleman Mahapuro Manoj Shahaji was examined as PW-4.

(A) He has deposed that he knows the accused person Patel Rameshore Baburao and his wife Sarla Patel. He further stated that he knew the accused person as they were posted together at the Unit Hq. from 2007. According to him he stayed at the Unit Hq. Family quarter No. 1 and the accused occupied Quarter No. 2 with his wife Sarla Patel and Riflenman Rajendra Singh (PW-6) occupied Quarter No. 3 at the relevant time. On 17/02/2010 at about 8 pm he went to the quarter of the accused person to give deer soup prepared by his wife to the accused person and his wife. He found the accused person and his wife Sarla Patel having their dinner together in the same plate. After giving them the soup he returned to his quarter and went to sleep. On the next day i.e. on 18/02/2010 at about 4 am, his wife woke him up saying someone was knocking at their door. He went and opened the door and found the accused Patel Rameshore Baburao standing in front of their door with a white small rope tied around his neck. Seeing the rope tied around his neck he asked what happened to him and why he had tied the rope around his neck. Accused replied that he was going to kill himself by hanging with the said rope. He then caught hold of the accused person and asked him why he was going to do so. The accused told him to come inside his quarter and would tell the reason. He went inside the quarter with the accused. The accused person took him to his bed room near their bed. The accused person opened the quilt (Rajai) on his bed, showed his wife and stated he had killed his wife by the rope and remained crying. He further stated that on opening the Rajai by the accused person, he found the wife of the accused Sarla

Patel motionless with her face upward and her hair pushing a bit upward. Her left hand stretching down by the side of the bed. He also saw reddish small mark around her neck and the tip of her tongue in between her lips and some blood stain near her left nose tripe. He thought at the relevant time that Sarla Patel had already died. Thereafter he came out holding the accused person. At the relevant time, the accused person was murmuring he would like to kill himself and tried to free himself from the witness. The witness than called out his wife and told her to call out Rajendra Singh (PW-6) from his quarter. His wife then called out Rajendra Singh (PW-6) from his quarter. In the meantime, he kept holding the accused person. Rajendra (PW-6) came out of his quarter and asked him what happened. He told Rajendra (PW-6) told that the accused had killed his wife inside the quarter and the accused was trying to kill himself by hanging and also told the PW- 6 that he had already removed the rope tied around the neck of the accused. He also stated that the accused person kept on saying that he would confess before their C.O. Saheb that he had killed his wife. So, he and PW-6 took the accused person to the quarter of the C.O. Col. M.P. Colest (Celestint) that they found the C.O. Saheb sleeping. Thereafter the accused person stated that he would confess before the 2-i-C Saheb namely Major Prasant Dixit. So they took him to the quarter of Major Dixit. On reaching the quarter of Major Dixit, the accused person knocked on the door. Major Dixit opened the door and the accused started talking to Major Dixit.

(B) Major Dixit 2-i-C then ordered them to leave the accused there. Then, they left the quarter and returned to their quarters. On the way back, they met Naik Subedar Shiv Singh who was coming for the morning physical training (PT) and informed him that the accused Patel Rameshore Baburao had killed his wife.

(C) During his cross examination, he stated that the accused Patel Rameshore Baburao was not keeping well in the previous two/three days from 17/02/2010 and had visited their unit doctor in one evening with him.

(D) He also stated that he found accused Patel having smell of liquor in his breathe at the relevant time when he found him standing at his door. The accused was not behaving normally by that time and the accused was not in his usual normal sense and was talking irrelevantly which were not related to one another. He also stated in his cross examination that there was no light inside the quarter of the accused person when they entered inside and he had used a torch light which he had brought and he saw the body of the deceased from head to upper part of the chest and her hand, stretching down and the deceased was wearing a Kameej having mixed colour of red and white.

(E) This witness is the only witness who had seen the accused Patel Rameshore Baburao and his deceased wife Sarla Patel alive and together in the evening of 17/02/2010 at their quarter No. 2 at the battalion family quarter when he had gone to give them deer soup. He is also the first person to have met the accused person in the early morning of the following day i.e. 18/02/2010 after the commission of the alleged crime.

(F) The evidence tendered by this witness could not be shaken in his cross examination and no substantial material evidence could be extracted to create any doubt in the credibility of the witness.

(3). Rajendra Singh was examined as PW-6.

(A) The evidence tendered by PW-4 is corroborated by PW-6 Rajendra Singh by deposing that he occupied quarter No. 3 in the battalion family line along with

his wife at the relevant time. He further deposed that in the morning of 18/02/2010 at about 5.15 am, Smt Priyanka wife of Mahapuro Manoj Shahaji (PW-4) called him out by shouting 'Bhaiya - Bhaiya' and knocking on his door. On opening the door, he found that Smt. Priyanka standing on the side of his door and Mahapuro Manoj Shahaji (PW-4) holding accused Patil Baburao from behind and the accused Patel Rameshore weeping. Mahapuro Manoj Shahaji (PW-4) told him "Rameshore Patel ne inki bibi ko mara". He first thought that the accused Rameshore Patel had beaten his wife. PW-4 then told him to take the accused Rameshore, to the quarter guard.

(B) He (PW-6) and the PW-4 took the accused person holding the left and right arm of the accused person towards the quarter guard. On their way, the accused requested them to take him to their Commanding Officer (CO) as the accused person would like to speak to the CO Saheb. On reaching the quarter of the CO Saheb, the accused person again requested them to take him to the quarter of their 2-i-C namely Major Prasant Dixit. They then proceeded towards the quarter of Major Dixit still holding the accused person by his arms side by side. After proceeding for about 150 meters towards the quarter of Major Dixit, the accused suddenly caught his throat by his right hand and told him that he had killed his wife by strangulating with his hands in the manner he held the throat of the witness. Thereafter, the accused ran towards the quarter of Major Dixit 2-i-C very fast. They did not chase him but proceeded to the quarter of Jr. Adjutant namely Naik Subedar Shiv Singh and informed him that Rameshore Patel had killed his wife. Thereafter three of them, the Naik Subedar Shiv Singh, Mahapuro Manoj Shahaji and he proceeded towards the quarter of their 2-i-C Major Dixit. There they found the accused talking to Major Dixit. Then Major Dixit ordered

the Jr. Adjutant Shiv Singh to take the accused to the quarter guard and to keep the accused in lock up.

(C) He further deposed that on 18/02/2010, in the afternoon, a police party seized one cotton rope and one mobile hand set with charger from the family line in the presence of Mahapuro Manoj Shahaji (PW-4) and himself, made a seizure list i.e. Ext-P/6. During his cross examination, he stated that the accused person was having smell of liquor in his breathe and found the accused behaving differently from his earlier behaviour.

(D) The evidence of the two witnesses PW-4 and PW-6 corroborated each other and there is no substantive material extracted in their cross examination to have any substantial effect on the veracity and credibility of the two said witnesses. The evidence tendered by the two witnesses supports the case of the prosecution that the accused Patel Rameshore Baburao killed his wife by strangulating. Both the witnesses have also deposed that the accused person had smell of liquor in his breathe at the relevant time when they were holding the accused person and that the accused was behaving abnormally.

(4). Subedar R.P. Passi was examined as PW-2.

PW-2, Subedar R.P. Passi was posted at the unit Hq. at the relevant time. He had identified the dead body of the Sarla Patel to the police for inquest examination. He also identified the dead body at the RIMS hospital for post mortem examination.

(5). R.P. Jakhmola was examined as PW-3.

PW-3, Rifleman, R.P. Jakhmola was also posted at 2nd AR Bn. Unit Hq. at Aina at the relevant time. According to him he was detailed for duty at family line

quarter No. 2 after the incident of murder of Sarla Patel. On 18/02/2010 at about 3.40 pm, police party of Henglep PS and carried out spot inspection and inquest examination at the PO in his presence. He saw the dead body of the Sarla Patel on the bed. The body was facing upwards with her head towards the north and her legs towards the south. The body was found covered from neck to ankle by Rajai'. He also saw some marks around her neck. He is also a witness on the inquest report prepared by the police. He has also stated that the police party photographs of the dead body. His statement is not shaken during cross-examination.

(6). Khuptinlal Singson was examined as PW-8.

PW-8 Khuptinlal Singson was the OC in charge of Henglep PS at the relevant time and the first IO of the case. He deposed that on 18/02/2010, at about 8.25 am, one Capt. Amitesh Kashyap (PW-1) of 20 AR Hq. Aina Mulhuichin made a report in writing stating that one rifleman No. G/5002428 AR Patel Rameshore Baburao had murdered his wife namely Sarla Patel at the Bn. family line quarter at 2nd AR Aina Mulhuichin at about 1.45 in the intervening night of 17th and 18th February 2010. The said report i.e. Ext-P/1 was registered as FIR Case No. 1(2)2010 Henglep PS u/s 302 IPC and he took up the investigation. On 18/02/2010, he visited the PO at about 3 pm and carried out inspection of the PO. He found the dead body of the deceased Sarla Patel lying on her bed covered by a chadar. He removed the chadar and carried out inspection of the dead body. He found blood coming out from the nose of the dead body and also found scare mark of rope on the throat and neck of the dead body. The body was lying facing upwards. The dead body was wearing cotton salwar red and white strip colour and a tericotton pajama and was wearing a Mangal sutra on

her neck. There was a Sindur mark on her forehead. The dead body was wearing 3 bangles made of plastic on her left hand and 2 bangles on her right hand. The dead body was also wearing one payal silver on each leg. He also seized the following articles: (i) one folded cotton rope about six ft. length (i) one mobile phone Maxx-463 with ear phone and charger in presence PW-4 and PW-6.

He further stated that the post mortem over the dead body was conducted at RIMS Morgue. He also stated that during the course of spot inspection, he prepared sketch map of the PO with index i.e. Ext-PI7 and Ext-P/8. He has also stated that during the spot inspection, on police personnel in his team also took photographs at the PO by mobile phone handset ie. Ext-P/9 to P/18, He also exhibited the relevant challan for conducting inquest over the dead body as Ext-P/4. He had also filled up the PM report form and exhibited the same as Ext-P/5. He also exhibited inquest report as Ext-P/3. He also stated that he had seized scalp hair and blood sample of the deceased on production by the doctor PW-7. Ext-MO/4 is the scalp hair and Ext-MO/5 is the blood sample. He had also exhibited FIR form prepared by him as Ext-P/19. He had also stated that after the post mortem examination of the dead body, the dead body was handed over to the AR authority under a handing over and taking over certificate i.e. Ext-P/20. During the cross examination, no substantive material could be extracted from the witness that could create any doubt in connection with the investigation of the case.

(7). Khuplen Lhoubum was examined as PW-9

PW-9, Khuplen Lhoubum is the SDPO posted at Thanglon at the relevant time. He took over the investigation of the present case from PW- 8 and conducted further investigation. According to him, he made a prayer before the Court of

CJM, Bishnupur for recording the statement of the accused u/s 164 CrPC and was recorded by the Ld. CJM, Bishnupur on 24/02/2010. After completion of the investigation, he submitted the relevant charge sheet i.e. Ext-P/2. During his cross examination also no substantive material could be extracted from him to create any adverse inference against the investigation carried out by him.

(8). MEDICAL EVIDENCE (Dr. Kh. Pradeepkumar was examined as PW-7)

PW-7, Dr. Kh. Pradeepkumar of the Department of Forensic Medicine, RIMS, Imphal cum Police Surgeon, Govt. of Manipur conducted the PM examination over the dead body on 19/02/2010 at about 3 pm and is of the opinion that the death was due to asphyxia resulting from strangulation by ligature. Homicidal in nature and the time since death was 24-48 hours.

(9). CONFESSION OF THE ACCUSED

Confessional statement of the accused Patel Rameshore Baburao recorded under Section 164 CrPC by Ld. CJM, Bishnupur on 24/02/2010 is exhibited as Ext-P/22. Before recording the statement, the Ld. CJM, Bishnupur had explained to the accused that he was not bound to make the confessional statement and if he made the confessional statement, it would be used against him as evidence during the trial. The Ld. CJM, Bishnupur had further asked the accused if the accused was willing to give his confessional statement and the accused was given one hour time for reflection. The accused answered that he was willing to give statement on that day itself. Accordingly, the confessional statement of the accused was recorded under Section 164 CrPC by the Ld. CJM, Bishnupur.

The accused, in his confessional statement under Section 164 CrPC stated that he heard his wife Sarla Patel called out the name of one "Tarsem" three times

in her dream (sleep) and he got surprise and thought how his wife came to know this name but he did not tell her anything about it. But on 17/02/2010, he asked his wife whether she had any relationship with Tarsem. She replied that she had relationship with him (Tarsem) and had intercourse with him. He then told her that how she committed such things in spite of his very deep love for her. He thereafter told his wife to forget about it and to consider it asked her to sleep.

Thereafter his stomach turned upside down and was trembling all over his body and his heart was beating like anything. Then he went to the bath room and splashed water and tried to cool down. He was so upset that he could not control his anger and feelings. In this fit of moment, he killed his wife by strangulating by a rope by his own his hand. Thereafter he could not control his feeling and to control it he took liquor kept in his quarter and had consumed a lot.

[5] The accused Patel Rameshore Baburao was examined under Section 313 CrPC and in his examination he stated that he did not know anything and also did not remember anything as he was totally under the influence of liquor. When he regained consciousness, he found himself inside the lock up of the quarter guard.

[6] The Learned Sessions Judge, Manipur West observes that the confessional statement of the accused Patel Rameshore Baburao also supports the case of the prosecution. It was held that the evidence of PW-3, PW-4 and PW-8 confirmed the existence of the injury mark around the neck of the dead body of Sarla Patel and the medical evidences and the opinion of PW-7: Dr. Pradeepkumar established that the death was due to strangulation. It was further held that the depositions of PW-4 and PW-6 established the

circumstances and inferences that the accused killed his wife by strangulation and the accused and deceased were seen last together. There is no material evidence that creates any doubt let alone reasonable doubt in reaching the conclusion that accused Patel Rameshore Baburao had killed his wife Sarla Patel in between the night of 17/02/2010 and 18/02/2010 inside their quarter No. 2 of the Family line of the 2nd AR Bn. Hg. at Aina/Mulhoichin.

[7] In the conclusion, the evidence on records convincingly points to the only possible conclusion that the accused namely Patel Rameshore Baburao, Rifleman No. G/5002428 ARM(GD) 21d AR AinalMulhoichin, Churachandpur, resident of Undangaon Village, PO Undagaon, PS Aijanta, District Aurangbad, Maharastra, son of Patel Baburao had murdered his wife Sarla Patel by strangulation in the night between 17th and 18th of February, 2010. Accordingly, accused Patel Rameshore Baburao was convicted for the offence under section 302 IPC and sentenced to life imprisonment.

[8] We have heard Mrs. N. Elizabeth, learned counsel for the Appellant as a panel advocate appointed by High Court Legal Services Committee and Mr. RK. Umakanta, learned Senior Counsel and Public Prosecutor on behalf of the State.

[9] The provision of relevant sections are reproduced here for reference:

Section 300, IPC defines Murder. It reads as follows:

"Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly)— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly)— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly)— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

"Exception 1.— When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—

(First)— That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly)— That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly)— That the provocation is not given by anything done in the lawful exercise of the right of private defence. Explanation.— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.”

Section 302, IPC provided Punishment for murder.—

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Section 304, IPC provided Punishment for culpable homicide not amounting to murder.—

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the

intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Section 235, CrPC provided judgment of acquittal or conviction -

1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law.

Section 313, CrPC provided Power to examine the accused-

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court--

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

[(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]

[10] The impugned judgment and order is challenged amongst on the following grounds:

A) The Hon'ble Judge has erred both in law and in facts while convicting the appellant under Section 302 of I.P.C.

B) The entire judgement is based on conjectures and surmises and deserves to be quashed and set aside and/or alter if Hon'ble Court concludes otherwise.

C) The Learned Judge ought to have appreciated that in absence of evidence of eye-witnesses, there is nothing whatsoever on record to prove the over act of the appellant.

D) It ought to have been looked into by the Hon'ble lower Court that there was no motive for the Appellant to kill and commit the murder of Sarla i.e deceased wife of appellant.

E) The judgement and order passed by the Hon'ble Session Judge is bad in law and without application of mind. The impugned judgement and order of conviction is also without having any substantial and cogent evidence against the appellant and thereto the same is deserved to be set aside or alter or modified into sec 304(A) of the Indian Penal Code.

F) The Trial Court has erred in holding that the death was due to acts of the appellant Rameshore. The prosecution story which led the accused to commit the offence because of an alleged "dream" of the victim wife Sarla

Patel is one invented by it, not acceptable even by any stretch of imagination. The confessional statement recorded just on the date of production of the accused in their custody without affording enough or sufficient time for reflection is quite "illegal" arbitrary and not to be acted upon in support of the prosecution case. Non examination of Naik Subedar (JCO) Shiv Singh on whose internal telephonic information received by P.W. 1, Captain Mayor Amitesh Kashyap lodge the written report Ext. P/1 has cast a serious doubt on the prosecution case or the story of murder of the victim Sarla Patel by her husband the accused in the manner invented by the Police. Para 31 and 32 of the impugned judgement have unfolded the clear case of misrepresentation/misinterpretation of the prosecution case or on the falsity/improbability of the prosecution story in that theory of "dream" of wife has been invented and taking of liquor after the crime making the accused not knowing anything have completely misplaced the prosecution theory. Sections 233 and 234 Cr. P.C. meant for affording opportunity for defence evidence and even for giving statement of accused as D.W. have been violated causing of justice and prejudice to the accused. Not as a matter of insisting on imposition of death sentence, sentence hearing ought to have been made before the impugned judgement and order was passed, and by the absence of sentence hearing, pre determination of mind of the trial judge to award life Imprisonment on the accused vitiates the trial as well as the impugned order/judgement.

G) That, trial Court ought not to have believed the evidence of the witnesses in the absence of consistency. The evidence regarding physical

assault is neither cogent nor reliable strangulation is not seen by any witness there is no ocular or eye witness to the alleged incident.

H) There is nothing on record to show that this Appellant strangled or hanged Sarla Patel and the statement of the witnesses have been recorded after inordinate delay though they were available to the police as such the reasoning of the trial court is based on conjectures and surmise as the confession made by Appellant when he was in police custody without any evidentiary value before trial court because in the disturbed state of mind and under pressure of police machinery, the Appellant had made the statement under section 164 of Criminal Procedure Code. As such Ld. Trial Court has wrongly held that the evidence of the Appellant accused has been proved that also without calling upon him to adduce evidence u/s 233(1) & 313(1)(b) Cr. P.C. 1973.

I) The Appellant has not committed any offence and there is no evidence on record to prove the guilt and therefore the order and judgement of conviction deserves to be set aside.

J) The prosecution has failed to prove their case beyond reasonable doubts and the Ld. Judge erred in convicting the Appellant under section 302 of IPC. The Ld. Judge has misinterpreted the evidence on record and wrongly came to the conclusion that the Appellant has committed the offence under section 302 of IPC.

K) The Ld. Judge has not followed proper procedure of law and acted just mechanically thereby convicting Appellant while recording confession under section 164 of Cr.P.C. as well as under section 313 when statement of accused was recorded.

L) The Ld. Judge has misinterpreted the provisions of section 302 of IPC. The findings, observations and reasons for convicting the Appellant are based on Surmises, conjectures and without there being any evidence to that effect the Ld. Judge relied on the confessional statement of Accused which was under pressure and in the disturbed state of mind. The Appellant has not committed any offence as alleged by the prosecution.

M)The judgement and impugned conviction order of the Ld. Judge is illegal and bad in the eyes of law.

N) The Ld. Judge misinterpreted the evidence and failed to appreciate that police had not followed proper procedure of law when investigation was going on. The impugned judgement and order is otherwise unwarranted and deserves to be quashed and set aside.

O) The Ld. Sessions Judge ought to have shown leniency on the ground that the Appellant is army servant and only earning member of his family and the evidence adduced by the prosecution was not cogent and sufficient to prove the guilt of the Appellant.

P) The evidence of prosecution witness is not reliable. There are material improbabilities, contradictions and omissions as well as inconsistencies in the evidence of the witnesses. The theory of the "dream" of the victim wife with name of one 'Tarsem' is being called out by her while sleeping has been fabricated and invented by the prosecution without any probability in the normal course of human being but making it a source/ground for Committing the offence by the accused and also with no effort of Police hunt out/trace any one to be connected with or involved in the murder of the victim woman.

Q) This Appellant was taking medicines and he was under observations of experts when he was in jail and even in the under trial period. Due to psychomotor disturbances, he was referred by Hospital officials of jail of Sajiwa to Jawaharlal Nehru Institute of Medical Sciences and Hospital, Porompat, Imphal East, 795005, Manipur, India being Reg. No. REC - 210316-66408 Ticket No. M.R. 210316 -51898 Department of Psychiatry, Bearing No. PSYCHIATRIC-Room No, 105 1st Floor. The paper for treatment given are available in the concern Sajiwa jail Hospital. Some papers of treatment given are attached here with for the kind consideration of Hon'ble Court. It clearly shows that Appellant was not mentally fit and oriented at the time of confessions recorded under section 164 Cr.P.C. And any offence might have been committed under influence or in disturbed mental condition is not crime in the eye of law. Insane person can do any act without sense and no any thoughtfulness is expected from mental or psychiatric patient.

R) The confessional statement recorded is not the support or backbone of the prosecution story as appellant was not common or ordinary human being at that time. It is medically proved by treatment papers which are on record and attached herewith for ready reference of Hon'ble High Court and the same may please be considered.

S) Prosecution witness P.W. 2, R.P. Passi, P.WN.4 M.Shahaji, P.W. 5 Tarsom Kumar and P.W. 7, K. Pradipkumar are not supporting prosecution story. There are so many contradictions and omissions.

[11] Mrs. N. Elizabeth, Learned Counsel for the Appellant submits that the judgment passed by the trial Court suffers from perversity as no opportunity of

being heard was granted to the accused on sentence. A consolidated common judgment of conviction and sentence was passed. It is submitted that the conviction is liable to be set aside on this ground alone.

[12] Learned counsel for the appellant raises doubt about the admissibility of the confession and conviction based on circumstances evidence with the aid of confessional statement of the accused. It is pointed out that the chain of events are not connected and there are many loose ends. There are contradictions between the depositions of PW-4 and PW-6. It is stated that the mark of strangulation cannot be attributed to the accused in absence of any forensic evidence. PW-5: Tarsemkumar who was alleged to have illicit relationship with the deceased, denied the allegation and thereby demolishing the motive on the part of the accused to kill his wife. Learned counsel further submits that no opportunity was granted to the accused to lead defence evidence thereby causing prejudice to him. It is urged that the accused be acquitted from the conviction under Section 302 IPC, or in alternation, at most, the case would fall under Section 304-A IPC.

[13] Mrs. N. Elizabeth, Learned Counsel for the Appellant refers to the following case law to substantiate her submissions:

i. N. Pishak Singh vs State of Manipur [2005(4)GLT720]

Para9. In our present case, at the time of examination after closure of the prosecution evidence, the accused appellant is found to have stated that he was having defence to be made and that he was having defence witness to be produced. At no stage, the defence counsel is found to have stated about having no defence witness to be produced. At the stage of proceeding u/s 232 Cr.P.C. the trial Court straightway passed

the impugned judgment and order convicting the accused appellant for the commission of the said offences. We are convinced that the failure on the part of the trial Court to call upon the accused appellant to enter on his defence has caused prejudice to him in his defence.

The learned Addl. P.P. fails to show that the trial Judge complied with the requirement of Section 233 of the Cr.P.C. nor can she show that there are materials on record to indicate that no prejudice has been caused to the accused appellant.

ii. Muthuswami vs State of Madras [A.I.R 1954 S.C.4(Vol.41.C.N.2)]

Para8. The only reason the High Court give for accepting the confession is because the learned Judges considered there was intrinsic material to indicate the genuineness. But the only feature the learned Judges specify is that it contains a wealth of detail which could not have been invented. But the point overlooked is that none of this detail has been tested. The confession is a long and rambling one which could have been invented by an agile mind or pieced together after tutoring. What would have been difficult is to have set out a true set of facts in that manner. But unless the main features of the story are shown to be true, it is, in our opinion, unsafe to regard mere wealth of uncorroborated detail as a safeguard of truth.

Para9. For the reasons given above, we allow the appeal, set aside the conviction and acquit the appellant.

[14] Per contra, Mr. RK Umakanta, learned PP submits that there is no irregularity in the proceeding before the trial Court. It is clarified that judgment of conviction and sentence can be passed on the same day. In the present case, minimum sentence of life imprisonment was awarded by the trial Court in the same judgment of conviction under Section 302 IPC. Conviction cannot be faulted on this ground alone, as the accused is bound to get minimum sentence of life imprisonment.

[15] Learned PP submits that the accused cannot point out any infirmity in the admissibility of his confessional statement and the same can safely be relied along with other incriminating materials and circumstances to arrive a verdict of conviction. In his confession, the accused admitted killing his wife and then taking liquor later on and as such he cannot claim benefit under due influence of alcohol. It is also pointed out that accused did not take opportunity given to him for leading defence witness during examination u/s 313 CrPC. It is prayed that the appeal be dismissed being devoid of any merit.

[16] Learned PP cites the following case laws to augment his argument.

1. (2001) 5 SCC 235 (3 Judges Bench) (PARA-11,12,13,14,18 & 26): Lokeman Shah -Vs - State of West Bengal.

It is within the radius of permissibility that court can rely on a factual presumption for the purpose of reaching one conclusion. Thus, the confessional statement, if admissible and reliable, can be used by the court for drawing inferences as to whether the confessor shared the common object with the rest of the members of the unlawful assembly. For that purpose the court will take into account other materials available in evidence. There is no warrant for the proposition that the court cannot

proceed from the confession even a wee bit for the purpose of knowing whether the confessor had entertained any particular intention while perpetrating the acts admitted by him in his confession. Whether such intention could have focussed on the common object of the unlawful assembly to which he joined depends upon other facts.

2. (2020) 5 SCC 782 (3 Judges Bench) (PARA-23,24,25,26,27,28 & 29) Manoharan - Vs - State by Inspector of Police, Variety Hall Police Station, Coimbatore.

A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a Rule of law, but is only a Rule of prudence. It cannot even be laid down as an inflexible Rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general Rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars.

3. (2019) 7SCC 1 (3 Judges Bench) (PARA-34,36,37 & 40)

Accused X -Vs - State of Maharashtra.

We are of the opinion that as long as the spirit and purpose of Section 235(2) is met, inasmuch as the Accused is afforded a real and effective

opportunity to plead his case with respect to sentencing, whether simply by way of oral submissions or by also bringing pertinent material on record, there is no bar on the pre-sentencing hearing taking place on the same day as the pre-conviction hearing. Depending on the facts and circumstances, a separate date may be required for hearing on sentence, but it is equally permissible to argue on the question of sentence on the same day if the parties wish to do so.

4. (2020) 4 SCC 451 (3 Judges Bench) (PARA-27.1 & 27.2) Manoj Suryavanshi -Vs - State of Chhattisgarh.

There is no absolute proposition of law that in no case there can be conviction and sentence on the same day. There is no absolute proposition of law laid down by this court in any of the decision that if the sentence is awarded on the very same day on which the conviction was recorded, the sentencing would be vitiated.

5. (1997) 6 SCC 162(PARA 14): State of Rajasthan -Vs - Hani@Hanif.

We are of the view that the discrepancy regarding the time of recording First Information Statement, on the facts of this case, is not enough to castigate the testimony of an important eye witness, whose presence at the spot cannot in any way be doubted. The maximum consequence which such discrepancy may visit, on the facts of this case, is that the First Information Statement cannot be used to corroborate the evidence of the maker of it.

6.(1955) 2 SCC 934/ AIR 1955 SC 196 (3 Judges Bench) (PARA-13)HN. Rishbud -Vs - State of Delhi.

It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for.

7.(2001)5 SCC 714 (3 Judges Bench) (Para-24,26, 27, 28,30 31 & 33) Ramdeo Chauhan -Vs - State of Assam.

We are satisfied that the present case is an exceptional case which warrants the awarding of maximum penalty under the law to the accused/appellant. The crime committed by the appellant is not only shocking but it has also jeopardised the society. The awarding of lesser sentence only on the ground of the appellant being a youth at the time of occurrence cannot be considered as a mitigating circumstance in view of our findings that the murders committed by him were most cruel, heinous and dastardly. We have no doubt that the present case is the rarest of the rare requiring the maximum penalty, imposable under law."

8.(1977)3 SCC 218 (Para-3): Tarlok Singh -Vs - State of Punjab.

In this case it is admitted that no opportunity was given under Section 235(2), Cr.P.C. to the appellant to show cause as to why the lesser sentence of life imprisonment should not be inflicted. We may make it absolutely clear that such a failure will not affect the conviction under any circumstances. The only point is relevant to sentence. Even there in a murder case where the charge of murder is made out, the limited

question is as between the two sentences prescribed under the Penal Code.

9.(2019) 4 SCC 125 (Para-8)

State of Madhya Pradesh -Vs - Vikram Das.

In view of aforesaid judgments that where minimum sentence is provided for, the Court cannot impose less than the minimum sentence. It is also held that provisions of Article 142 of the Constitution cannot be resorted to impose sentence less than the minimum sentence.

10.(2003) 7SCC 258 (Para-12, 13 & 14)

Gurdev Singh -Vs - State of Punjab.

It was held that the mandate of the legislature is clear that no adjournment can be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed upon him. Nonetheless, the Court can in appropriate cases grant adjournment for the aforesaid purpose, if the proposed sentence is a sentence of death. From the material on record, it does not appear that any request was made to the learned Sessions Judge for adjournment. In the circumstances, we see no substance in the contention that the sentence imposed was vitiated for non-compliance with Section 235(2) of the Code of Criminal Procedure, 1973.

11.(2004) 10 SCC 192 (Para - 11, 12 & 13)

Kamalakar Nandram Bhavsar -Vs - State of Maharashtra.

"The fact that Supreme Court in Santa Singh case MANU/SC/0167/1976 : 1976CriLJ1875 remanded the matter to the Sessions Court does not

spell out the ratio of the judgment to be that in every such case there has to be a remand but the remand is an exception, not the rule and ought, therefore, to be avoided as far as possible in the interest of expeditious though fair, disposal of cases."

12. (2004) 10 SCC 192 (3 Judges Bench) (Para 11)

Prahlad vs State of Rajasthan.

We find that there is ample material against the Accused to convict him for the offence Under Section 302 Indian Penal Code. All the circumstances relied upon by the prosecution stand proved so as to complete the chain of circumstances in respect of the offence Under Section 302 of the Indian Penal Code. The Trial Court and the High Court are, on facts, justified in convicting the Accused for the offence Under Section 302 of the Indian Penal Code. However, we are unable to find reliable material against the Accused for the offences Under Section 3 and 4 of the POCSO Act.

[17] We have heard the learned counsel for the appellant and learned PP for the State and perused the materials on record and relevant law in this regard.

[18] The learned Sessions Judge, Manipur West (now, Imphal West) convicted the accused under Section 302 IPC for killing his wife based on the circumstances evidence, the confession made by the accused and medical opinion. The main ground for challenge is the passing of common judgment of conviction and sentence of life imprisonment on the same day without proving any opportunity of being heard on sentence. Other grounds are missing links in the chain of events, doubting the admissibility of confession, absence of motive

and so on. Alternate ground is accidental death not amounting to culpable homicide.

[19] The provisions of Section 235(2) and Section 313(1)(b) of CrPC provide for hearing the accused on sentence and leading of defence evidence. However, in the present case, the accused did not exercise the option of leading defence evidence in spite of offering such opportunity. On perusal of the case record, there is no evidence of separate proceeding of hearing on sentence and accused was directly awarded life imprisonment in the same judgment of conviction. Even though such a practice of a departure from the norm prescribed by statute, no prejudice is caused to the accused as minimum sentence of life imprisonment for murder was awarded by the trial court. As such, the conviction and sentence cannot be faulted on this limited ground.

[20] Accused cannot substantiate any cogent reason for disbelieving the confession and other chain of events. We are of the view that there cannot be a complete acquittal of the accused.

[21] Now, we are examining whether the circumstances considered by the trial Court are sufficient to return a verdict of murder under Section 302 IPC.

[22] From the confession of the accused [Ext.P-22], it is clear that he killed his wife by strangulation due to grave and sudden provocation on coming to know about the illicit affair of his wife with one Tarsem Kumar [PW-5]. The trial Court has accepted the admissibility of the confession. In the circumstances, we are of the view that the present case falls within first exception to Section 300 IPC that culpable homicide is not murder, if the offence has been committed due to grave and sudden provocation depriving self-control.

[23] In **Pravin Khimji Chouhan v. State of Maharashtra, MANU/MH/0466/2022**, the Bombay High Court observed that although the act was brutal, it was not premediated. The accused acted in a sudden fit of rage, and this absence of prior planning was a significant factor in reducing the conviction from murder to culpable homicide not amounting to murder.

[24] In **Hansa Singh v. State of Punjab, AIR 1977 SC 1801**, the accused/appellant, upon witnessing one G committing an act of sodomy on his minor son, lost self control and, in a state of emotional disturbance, inflicted a fatal assault on G. Although initially convicted under section 302, IPC, the Honble Supreme Court held that the act was committed under grave and sudden provocation. Consequently, the conviction was altered to one under under section 304 part II of the IPC. Their Lordships observed as under :

"We, however, feel that the occurrence took place while the deceased was committing sodomy on Haria and that gave such a sudden and grave provocation and annoyance to the appellant which impelled him to assault the deceased. For these reasons we are satisfied that the case of the appellant falls clearly within the purview of Section 304, Part II of the Indian Penal Code. The appellant on seeing the deceased committing the act of sodomy on his son, lost his power and self-control and it was undoubtedly a grave and sudden provocation for him which led him to commit the murderous assault on the deceased."

[25] In the case of **Jagriti Devi v. State of H.P.: (2009) 14 SCC 771**, Hon'ble Apex Court analysed the thin distinction between culpable homicide and murder. Relevant para are reproduced below for a clear understanding.

"26. Section 299 and Section 300 IPC deal with the definition of "culpable homicide" and "murder" respectively. Section 299 defines "culpable homicide" as the act of causing death:

(i) with the intention of causing death, or

(ii) with the intention of causing such bodily injury as is likely to cause death, or

(iii) with the knowledge that such act is likely to cause death.

A bare reading of the section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expressions "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e. mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

27. Section 300 IPC, however, deals with murder although there is no clear definition of murder provided in Section 300 IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa.

28. Section 300 IPC further provides for the exceptions which will constitute culpable homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge, then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act not amounting to murder has been brought out in the numerous decisions of this Court.

29. In *State of A.P. v. Rayavarapu Punnayya**¹ this Court observed as follows at p. 386 : (SCC para 12)

"12. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder', is 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The *first* is, what may be called, 'culpable homicide of the first degree'. This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The

second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

*1. (1976) 4 SCC 382 : 1976 SCC (Cri) 659

[26] In the case of **Camilo Vaz v. State of Goa: (2000) 9 SCC 1**, Hon'ble Supreme Court explains the provisions of Section 304 IPC and relevant para is reproduced below:

"14. This section is in two parts. If analysed, the section provides for two kinds of punishment to two different situations: (1) if the act by which death is caused is done *with the intention of causing death* or causing such bodily injury as is likely to cause death. Here the important ingredient is the "intention"; (2) if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a danda on a vital part of the body with such force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation the case will fall in Part II of Section 304 IPC as in the present case. We are also not oblivious of the fact that the other four accused who were similarly convicted with the appellant with the aid of Section 149 IPC have been held guilty only for offence under Section 326 IPC."

[27] In the case of **Kundan Singh v. Delhi Admn.: (1975) 3 SCC 822**, the fact is the deceased was having illicit relations with her paramour even during the life time of her late husband and the accused, the relatives of the widow were very resentful towards her. On the day of occurrence, the accused beat up the deceased till she died. It was held that there was apparently a

common intention on their part to give a beating and they must have had the knowledge or likelihood of causing the death through the beating. The conviction under Section 302/34 IPC was altered to the one under Section 304, Part II/34 and sentenced to undergo imprisonment for the period of 5 years that already spent in custody.

[28] In the case of **Asha Gopal (1987) Unrep Cr C 932**, Bombay High Court observed that no higher provocation can be given than that of finding a man's wife in actual intercourse with a paramour, and death caused under such circumstances must be visited with a very light sentence and imposed 6 months' rigorous imprisonment for death caused due to such provocation.

[29] We are of the view that the present case falls under Section 304, Part II IPC as illicit relationship of the deceased wife with someone can be treated as a grave provocation to the husband and anything happened due to loss of self-control would not fall within the definition of murder. The accused had no intention of causing injury to the wife which would likely to cause death in normal circumstance. His mental condition can be perceived from the contents of his confession and the deposition of PW-4.

[30] Accordingly, we alter the conviction under Section 302 IPC to the one under Section 304, Part II IPC, i.e., culpable homicide not amounting to murder and reduced the sentence of life imprisonment to rigorous imprisonment of 10 years. The accused is in custody since his arrest on 19.12.2010 and he has spent almost 15 years in custody. In the circumstances, his sentence is set off against the period already undergone in terms of the mandate of the provisions of Section 428 CrPC. Since the appellant has spent more than duration of the

altered sentence of 10 years, he is directed to be released from detention forthwith, if not required in any other case.

[31] The appeal is partly allowed. Return the case record along with a copy of this judgment to the successor court, i.e., learned Sessions Judge, Imphal West.

[32] Send a copy of this order to the Superintendent, Yerawada Central Prison, Pune-6 for information and necessary action. Send another copy of this order to the Superintendent, Manipur Central Jail, Sajiwa for information.

[33] We appreciate the contribution of Mrs. N. Elizabeth, learned counsel appearing on behalf of the appellant as a panel lawyer for HCLSC.

JUDGE

CHIEF JUSTICE

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