

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 114/2010
CrlM No. 1147/2024

Reserved on: -14.08.2025
Pronounced on: - 11 .09.2025

State of Jammu and Kashmir

.... Appellant(s)

Through: - Mr. Diwakar Sharma, Dy. AG

V/s

Rajan Lal S/o Amrit Lal R/o Henota,
Tehsil Mazirpura, District Koshambi, Uttar Pradesh,
at Present Gunner No. 14432713,
32 Battalion RR C/o 56 APO

.... Respondent(s)

Through: - Mr. Rohit Kohli, Advocate

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Per: -Sanjay Parihar, J

1. The aforesaid Acquittal Appeal is directed against the judgment dated. 26.02.2010 (hereinafter referred to as 'impugned judgment') passed by the Sessions Judge, Reasi (hereinafter referred to as 'the trial court') in case FIR No. 16/2004, Police Station, Bhawan, Katra U/S 302 RPC, in terms whereof the respondent(hereinafter called as 'accused') who was facing trial thereto has been acquitted, which acquittal of the respondent is questioned, primarily, on the ground that the judgment is contrary to law, against the facts of the case and that the trial court has failed to appreciate the prosecution evidence and the conclusion drawn is against the weight of evidence on record. The prosecution has proved its case beyond doubt

as there was sufficient material on record to convict the accused. Still, the trial court adopted a technical approach and erred in acquitting him. Hence, the findings drawn thereto are palpably wrong and perverse, and need to be set aside by accepting the aforesaid appeal, and the respondent be punished accordingly.

2. Briefly stated, the aforesaid FIR was registered on 18.06.2004 on receiving information that an unidentified dead body of a married woman was lying in Beji Nallah, Vaishno Devi, Katra. The woman, aged approximately 30 to 35 years, was found with injuries primarily caused by a fall, and both her legs were broken. There was no prior information or missing report regarding her. The police-initiated proceedings under Section 174 Cr.P.C. got a postmortem conducted, and kept her body in the Mortuary Room of CHC, Katra, for identification. Since the body had started decomposing, she was cremated after her identity was preserved. During the enquiry, a telephonic message was received from the Major Adjutant 32 R R, C/o 56 APO, stating that the accused, Rajan Lal (respondent herein), had returned to his unit after availing 59 days of leave and had confessed to killing his wife, Lovely Mishra. On that basis, on 25.06.2004, the complainant moved an application before the SHO, Police Station Ram Munshi Bagh, and FIR No. 16/2004 under Section 302 RPC was registered at P/S Bhawan. Thereafter, the accused was arrested on the strength of his confession before his Commanding Officer, admitting that he had administered pesticide tablets to the deceased and, after she became unconscious, pushed her off a cliff near Bharav Temple

on the night of 17.06.2004 after taking her to the Mata Vaishno Devi Shrine.

3. It was revealed during the course of investigation that after throwing the deceased off the cliff, the accused made good his escape, and at his instance, the police recovered the bag of the deceased containing her clothes, certain letters written by her, and two railway tickets. The investigation further disclosed that immediately after marriage, the accused, along with his brothers, had subjected the deceased to persistent demands for dowry and had beaten her on several occasions. The father of the deceased, to meet such unlawful demands, borrowed an amount of fifty thousand rupees and paid the same to the accused, who, however, remained dissatisfied and further demanded a car. Owing to this continued harassment, the deceased started residing at her parental home. In April 2004, the accused availed 59 days' leave from his Unit and went to his residence, where he stayed for 4–5 days. Thereafter, he deputed his brother to bring back the deceased. Upon visiting her parental home, his brother came to know that the deceased was not present there. Subsequently, the accused himself visited his in-laws, where he was informed that the deceased had left with a boy from the village 2–4 days earlier, with whom she was alleged to have developed illicit relations.
4. The accused felt enraged; therefore, he hatched a plan to kill his wife and to implement his scheme, he again sent his brother to his in-laws to bring her back. When the accused asked his wife about the whole episode, the deceased admitted that she had gone with a boy from the village and that he should pardon her. The accused told his in-laws that, as he was

provided with accommodation by the army unit at Srinagar so he would take along the deceased as well, to which she agreed. He also conveyed to his in-laws that before going to Srinagar, he would take his wife to perform Darshan of Mata Vaishno Devi. On 17.06.2004, he went to the temple and performed darshan with the deceased. When they reached Om Point, the deceased told the accused that she was having a headache, to which the accused gave her an intoxicating tablet, making her believe that it was meant for the headache. Thereafter, the deceased started feeling nauseous and began vomiting. The accused took her across the way to help her vomit, where he made her sit on the ground facing towards Dadal (cliff), positioned himself behind her, and thereafter pushed the deceased with both hands down the cliff and fled from the spot.

5. The challan was produced before the court of learned CJM, Udhampur, on 30.09.2004, who committed the same to the court of Sessions Judge, Reasi. On 29.10.2004, the accused was charged under Section 302 RPC, who pleaded not guilty and claimed to be tried.
6. In support of its case, the prosecution examined PW Kewal Krishan, Constable, PW Raju, PW Ram Dass, PW Abdul Ghani, PW Atta Mohd., PW Chanchal Singh, Head Constable, PW Nitin Sharma, Head Constable, PW Ashok Kumar, PW Bachu Lal Bishawkarma, PW Ashok Kumar Mishra, PW Mohinder Pal Constable, PW Shri Vishal Singh Constable, PW Major C.S.Sidhu, PW Lieutenant Colonel J.S. Monget, PW Vijay Shanker Subedar, PW Rajinder Sharma, PW Mohan Lal, Head Constable, PW Dr. Gopal Dutt, PW Mushtaq Ahmed and PW Janak Singh, Tehsildar,

whereas the accused/respondent had produced DW Inder Kumar Pandey and DW Bhaya Lal in his defence.

7. Brief statements of the witnesses are reproduced herein for the disposal of this appeal.
8. **PW Kewal Krishan, Constable**, is a witness to the seizure of the dead body, which was lying in the Nallah at Panchi Helipad, and he claims that after seizure of the body, blood stains on the ground, including straw of grass and others were taken, which were separately seized. **PW Raju** claims that a dead body was lying near Sanji Chhath. They went to the spot, and from there the body was then shifted to the nearby hospital. When the body could not be identified, the same was given to the Police. **PW Ram Dass** was also an employee of Shri Mata Vaishno Devi Shrine Board, who too is stating on the same lines. **PW Abdul Ghani** was also an employee of the Shri Mata Vaishno Devi Shrine Board, who says that the dead body of a woman was lying in a Nallah, and he, along with police personnel, had gone to the spot, removed the body, which was later handed over to Ram Dass for the performance of the last rites. **PW Atta Mohd.** too is a witness to the seizure of the dead body. **PW Chanchal Singh, Head Constable**, claims that on 18.06.2004, when he was posted in Bhawan and on Patrol duty, the dead body of a woman was lying beneath Nallah 50/60 feet down from the roadside with Sindhoor on her forehead. The dead body was taken into custody and subjected to a postmortem.
9. **PW Ashok Kumar**, who is the father-in-law of the accused, claims that the deceased was his daughter, who got married to the respondent on

11.06.2003, and after marriage, he came to know that his daughter was being harassed on the claim of dowry and that the respondent and the deceased's in-laws were abusing and beating her and demanding a car. The deceased was unhappy in her in-laws' house. On 11.06.2004, he was told by the respondent that he had been allotted a room in his Unit and he would be going there, but before that, he would perform darshan at Mata Vaishno Devi, and then he would keep the deceased with him in his Unit. After a few days, he received information from the Police Station, Katra, that the body of his daughter had been recovered and a case of murder had been registered under Section 302 RPC. He came to Katra, and there he was shown saris and three pages of a diary handwritten by the deceased, which he identified and was separately seized. He told the Police that the deceased had gone with the respondent to Vaishno Devi. When he paid farewell to his daughter, the respondent was on leave. Before proceeding to Vaishno Devi, the respondent used to tell him to take his daughter back, and the deceased used to tell him that the respondent is demanding dowry from her and on one occasion, he took Rs. 50,000/- from his brothers and gave it to the respondent because the respondent was demanding a car from him. He denied the suggestion that the respondent had told him that the deceased had separated from him. The respondent never told him that his daughter had gone somewhere, or that her whereabouts were not known. He received information from the Police Station, Bhawan, through wireless message on 6th of July, 2005.

10. **PW Bachu Lal Bishawkarma** has stated that he knew the deceased Lovely Mishra, who got married to the respondent in the year 2003. He

was told by the father of the deceased that the respondent had been demanding dowry from the deceased, and for not meeting the demand, the respondent used to beat her. The witness claims to have no interaction with the deceased. **PW Mohinder Pal Constable** claims that on 17.06.2004, the respondent had given an intoxicating tablet to the deceased, who became unconscious and later on, he threw her down the cliff between 8.00 to 8.30 p.m. Later, the respondent was brought from his Unit to Mata Vaishno Devi on 30.07.2004, where he made a disclosure which led to the recovery of photos, saris and other belongings of the deceased, which were seized. **PW Vishal Singh, Constable**, also claims that in July 2004, the respondent produced saris, a comb, photographs, a marriage card and some letters written in Hindi. The respondent had also disclosed that he went to Behro Temple along with the deceased, and near Om Point, he gave her an intoxicating tablet, thereby she became unconscious, and thereafter he threw her down the cliff, which disclosure is recorded as EXPW-MPI.

11. **PW Major C.S. Sidhu**, who happens to be the superior officer of the respondent, claims that the accused had gone for 59 days' leave and on 21.06.2004, after availing the leave, he came back there. He informed his Platoon Commander, PW Subedar Vijay Shankar, that he had murdered his wife, Lovely Mishra, during leave and confessed to him. The Platoon Commander produced the respondent before the witness, where the respondent reiterated his suspicion regarding the character of the deceased, alleging that she was involved in illicit relations. He confessed that, under the pretext of visiting Vaishno Devi, he had first taken her to

Delhi, where he could not execute his plan. Subsequently, he took her to Vaishno Devi and thereafter to Behro Temple, where he administered an intoxicating tablet to her. As a consequence, she became unconscious, and he then pushed her down. The witness claims to have taken the respondent to his Commanding Officer, Colonel A.P. Singh. Thereafter, the Commanding Officer directed for registration of FIR against the respondent through the Police Station, Ram Munshi Bagh. The witness further went on to state that it was the Commanding Officer who recommended the action. The respondent had made his first confession before Vijay Shankar, the immediate officer of the respondent, and the former had brought the respondent before the witness for confession, and thereafter, the witness took him before his senior, Commanding Officer. The witness could not say whether, before confessing, the Subedar had enquired from the respondent.

12. **PW Lieutenant Colonel J.S. Matang** has stated that in June 2004, he was in Command of 32 RR in Srinagar, where in those days the respondent was serving. On reporting back duty, the respondent stated to Subedar Major Vijay Shankar of having killed his wife at Vaishno Devi during the leave period. The Senior J.C.O. took the respondent before the Company Commander, Major C.S. Sidhu. There he confessed, which was later on narrated by him, ditto before the witness. Later on, the Company Commander took him (respondent) before Colonel A.P. Singh, who also made an enquiry from the accused and thereafter handed him over to the Police for registration of FIR. **PW Subedar Major Vijay Shanker**, before whom the respondent had for the first time made a confession, has

been **declared hostile**; however, on being cross-examined, he admitted that the accused/respondent had told him in his presence that he had given an intoxicating tablet to Lovely Devi, who became unconscious, and then he strangled her. The witness claims that at that time the respondent was posted in the Army and the witness could not have taken action against him, which was to be taken by the Commanding Officer. **PW Dr. Gopal Dutt** has stated that he conducted a postmortem of the body of the deceased and gave the certificate Ext-P23/1. The cause of death was due to multiple injuries resulting in hemorrhagic shock.

13. After the closure of the evidence, the respondent, in terms of Section 342 Cr.P.C., came to be asked to tender his explanation, in which he denied the charge and incriminating circumstances by stating that he had not committed any illegal act and that the witnesses had made false statements. He also denied having made any such extra-judicial confession or having administered any intoxicating substance to his deceased wife.
14. The Defence has produced two witnesses, **DW Inder Kumar Pandey** and **DW Bhaya Lal**, who both claim that the deceased had cordial relations with the respondent and there was no allegation of any dowry. They knew the deceased as well as the respondent. They both admit that the respondent had taken the deceased to Mata Vaishno Devi, and later they came to know she had fallen and was killed; however, they do not know who killed the deceased.
15. Counsel for the appellants, questioning the trial court judgment in its material particulars, argued that the trial court has failed to appreciate the

prosecution's evidence and has drawn a conclusion which is against the evidence on record. The finding is not only palpably wrong and perverse, but needs to be set aside as the material error has been committed by the trial court in acquitting the respondent. He further argued that the extra-judicial confession by the respondent is squarely proved from the evidence of the Army Officials. So much so, even the defence has corroborated that it was the respondent who took the deceased to the Vaishno Devi Shrine on 17th June, and on 18.06.2004 her dead body was recovered in the afternoon, having suffered multiple injuries with the alleged history of having died due to a fall from height near Bharav temple at Vaishno Devi, Katra.

16. That once it is an admitted case of the respondent that he was accompanying the deceased in Vaishno Devi, then the fact that the deceased was stated to be the body of an unknown woman goes on to show that the deceased must have been thrown by the respondent in the Nallah, wherefrom her body was recovered. She remained unidentified for a long period of time. It is only after the respondent made an extra-judicial confession; the body of the deceased could be identified as that of Mst. Lovely Mishra.
17. *Per contra*, counsel for the respondent supporting the acquittal argued that the trial court has returned the finding of acquittal after due appreciation, and the evidence on record unerringly pointed towards the innocence of the respondent.
18. The trial court, after appreciating the evidence, has observed that the following were required to be proved: -

- (i) That the accused planned to kill the deceased and purchased a tablet, which was having the effect of making her unconscious.
- (ii) Once administered to make her unconscious, so that he would throw her down the cliff, which led to her death.
- (iii) That the accused made an extra-judicial confession about the killing of his wife before the Army Officials.
- (iv) In addition, there was also a requirement to prove that he wanted to take dowry from his in-laws and had become revengeful on coming to know that his wife was having illicit relations.

19. The trial court took the view that the accused admittedly attempted to set up a defence that, after performing darshan at Vaishno Devi, his wife drifted away from him on their return, and he lost contact with her. He also sought to establish this defence by putting such suggestions to the father of the deceased. However, as per the version of the prosecution witnesses, the accused is not shown to have informed either the Police or the Shrine Board about his wife going missing. All these aspects would fade into oblivion once the prosecution can prove a complete chain of circumstances, leaving no lacuna for a false defence. The court further found that it was nowhere proved that the respondent had visited the Shrine earlier, or that he was aware that the place was suitable for executing his plan to kill his wife. Whether the occurrence dated 17.06.2004 of the fall from the cliff was accidental or the deceased was thrown by any person down the cliff, remained in mystery. The conduct of the accused in not informing the authorities about the disappearance of his wife raises grave suspicion; however, that cannot take the place of proof.

The respondent/accused had denied having administered any intoxicating tablet, and during the disclosure of certain material belonging to the deceased and its recovery does not prove the guilt of the respondent because what was recovered from the bag of the deceased were her belongings, which could not in any way be said to be incriminating.

20. According to the trial court, the net result is that the prosecution has failed to prove the guilt beyond a reasonable doubt and where two probabilities are apparent that the accused might have thrown the deceased from the cliff or she may have died on account of a fall, the one favoring the accused is to be taken. On that basis, it proceeded to acquit the accused.
21. We have gone through the record of the case, have also perused the grounds urged in the appeal.
22. We would like to delineate the admitted position of the facts that an unknown body of a married woman of 30/35 years was recovered by the Police Station, Bhawan, on 18.06.2004 at about 11 a.m. Her death appears to have been in suspicious circumstances. The dead body remained with the police authorities till 21.06.2004. Her autopsy was conducted on 21.06.2004. At that time, she was an unknown married woman with an alleged history of having died due to a fall from a height near Bhawan, who had suffered several external and internal injuries and as per the medical legal opinion exhibit Ext. P23/1, the deceased died due to multiple fractures and hemorrhagic shock, with the time since death being 96 hours before her postmortem at 02:10 pm on 21.06.2004. It is also admitted that the body of the deceased had started decomposing; therefore, it was handed over to PW Ram Dass for effecting her last rites

after preserving her apparel, photographs, etc., which were kept as an identification mark and seized vide exhibit EXPWCS, to enable PW Ram Dass to get her cremated. In the meantime, the issue of death in suspicious circumstances had led to 174Cr.P.C. proceedings, which continued to verify the particulars of the deceased. Apparently, there were no identity documents with her; she remained an unidentified body, which was put to last rites, with the body having started decomposing. It is only on 27.06.2004, when the Police received a communication from SHO Police Station, Ram Munshi Bagh forwarding a letter dated 25.06.2004 drawn by Major Adjutant 32 Rastriya Rifles stationed at Srinagar with the following contents: -

- “1. It is to bring to your notice that No 14432713H Gunner Rajan Lal of this unit has reported back in unit on 21 June 2004 after availing 59 days balance of annual leave. During the course of the interview by his Company Commander, the following have been revealed: -*
- (a) He confessed to having murdered his wife Smt Lovely Mishra, daughter of Shri Ashok Kumar, resident of Village & Post Office –Pachimsarira, Tehsil – Manjhanpur, District – Kaushambi (Allahabad), UP, on 17 Jun 2004 at about 2145 hours near Bhairav Nath Temple, Vaishno Devi, Katra (J&K).*
 - (b) The individual has reportedly administered some pesticide in the form of tablets and subsequently, on becoming unconscious, threw the body of his wife down the cliff.*
- 2. You are requested to lodge an FIR at your police station to this effect for your investigation and send a copy of the same to this unit.”*

23. It is on receipt of the aforesaid communication that FIR No. 16/2004 came to be registered with inquiry converted into commission of offence under Section 302 RPC, which was put to investigation, whereafter the body of the deceased came to be identified to be that of the wife of the respondent. It is relevant to state that the respondent on being taken into custody after registration of FIR gave recovery of a bag containing clothes of the deceased as well as some handwritten documents, including letters which are claimed to have been written by the deceased to the respondent. Along with it, there was seizure of two railway tickets bearing No. 24105063 from Allahabad to New Delhi Super-Fast Train dated 14.06.2004 and another railway ticket bearing No. 12283888, New Delhi to Jammu Tawi Super-Fast for 15.06.2004, which seizure is recorded as EXPWMP-1 and has been corroborated from the testimony of PW Vishal Singh and PW Mohinder Pal.
24. Before the trial court, the respondent had, on the one hand, attempted to carve out a case that he had not visited Vaishno Devi at all, and instead pleaded that his wife had gone there on her own. In the same breath, however, he also claimed that he and his wife had indeed gone to Vaishno Devi, but after performing darshan, she drifted away from him, and though he tried to locate her, he could not. The prosecution, on the other hand, contended that the respondent did not inform any authority about her disappearance, and that after the recovery of the body, it remained unidentified until cremation. Only after the registration of the FIR, the

deceased was identified by the respondent as well as by her father, PW Ashok Kumar, and PW Bachu Lal, both residents of Kaushambi, U.P.

25. Since the trial court has, on the set of evidence before it, proceeded to record an acquittal of the accused of the charge in question and while sitting in appeal against the judgment of acquittal, we have to examine whether the finding returned by the trial court is reasoned one and that the evidence before it had led to the only conclusion of acquittal.
26. In “*M.G. Agarwal v. State of Maharashtra*” AIR 1963 SC 200, the Constitution Bench of the Apex Court observed that the approach of the High Court (Appellate Court) in dealing with an appeal against acquittal ought to be cautious because the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial.” In “*Ramesh Babulal Doshi v. State of Gujarat*” AIR 1996 SC 2035, the Apex Court, speaking about the approach of the appellate court while considering an appeal against an order of acquittal of the accused, stated as follows: -

“7. While sitting in judgment over an acquittal, the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can then – and then only – reappraise the evidence to arrive at its own conclusions....”

27. In the latest pronouncement of the Apex Court in ***“Subramanya vs State of Karnataka”*** 2022 Live Law SC 887, discussing the law on the subject as to when the appellate court would intervene in the acquittal order of the accused, proceeded to observe as follows: -

“43. This Court in Chandrappa (supra) highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is a presumption in favour of the accused and the accused is entitled to get the benefit of doubt, but if it decides to interfere it should assign reasons for differing with the decision of acquittal. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:

“42. From the above decisions, in our considered view, the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

- (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.***
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.***
- (3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”,***

“glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasis the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible based on the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

28. In view of the aforesaid legal pronouncements, we now turn to the merits of the appeal. The prosecution's case is that the accused, harbouring doubts about the character of his wife, resolved to eliminate her and, under the pretext of paying obeisance at the Mata Vaishno Devi Shrine, took her to Vaishno Devi. It is alleged that on 17.06.2004, he administered a pesticide tablet to her, causing her to lose consciousness, and thereafter pushed her down the cliff near Bhairon Nath Mandir at about 09:45 hours. The respondent, however, denied this version, contending that there is no evidence to establish that the deceased was administered any insecticide or intoxicating substance.

29. We have examined the medical report and find that no viscera had been preserved. So, in the absence of viscera, it could not have been ascertained whether the deceased was administered any intoxicating substance or not. We are conscious of the fact that the deceased remained unknown until the FIR was registered, and having regard to the fact that it was the duty of the police agency to have preserved the viscera, but having not done so, its advantage cannot go to the respondent and we do not see any prejudice having been caused to the respondent in this regard.
30. On going through the evidence on record, once the body of the deceased had been recovered from the cliff from Behro Ghati Katra on 18th of June, 2004 and having regard to the nature of injuries suffered, as extracted from the medical report, the deceased has died because of a fall from a cliff, resulting in multiple injuries.
31. PW Ashok Kumar admitted that when the respondent came on leave to his Village, the deceased had gone with her friend, and the respondent sent his brother to bring her back. Accordingly, she went with the respondent, who had claimed that he had obtained rented accommodation in his Unit and would be taking her there after paying obeisance at Vaishno Devi. Though this witness attempted to project a case that the respondent was harassing the deceased for dowry and had demanded a sum of Rs. 50,000/-, the evidence on this aspect appears shaky. There is no corroboration, as PW Bachu Lal denied any such demand of dowry by the respondent. Instead, he stated that he was told by the father of the deceased about the alleged demand, which renders his testimony hearsay. PW Bachu Lal further admitted that he was not a witness to the incident,

nor did he have any personal knowledge of it. He only stated that the deceased went missing, as the respondent had conveyed to his in-laws that he had lost her at Vaishno Devi. This version also finds support from the testimony of PW Ashok Kumar.

32. PW Mohinder Pal, Constable and PW Vishal Singh, Constable are claiming that on arrest of the accused a bag was recovered from him, which contained the belongings of the deceased and that during questioning, the accused took the police party to the scene of the crime and pointed out the spot from where he had pushed the deceased down to the cliff. This aspect of the disclosure **and pointing out memos** had been contradicted by the defence, and **the trial court has rightly taken the view that such disclosure and pointing out memos has no evidentiary value. We agree with it**, though, the prosecution had not been able to sustain as to where the intoxicating substance, if any, was bought and administered to the deceased. It was pointed out that the offence had taken place in secrecy, so the same was to the personal knowledge of the respondent, which he did not divulge, so an adverse inference was to be drawn against the respondent.

33. The prosecution, during trial, proved that the body of the deceased was recovered from beneath a cliff on 18.06.2004 and was subsequently identified as that of the deceased, establishing that she had indeed gone to Vaishno Devi. The recovery of two railway tickets from the possession of the respondent is not disputed. These tickets show that the respondent travelled from New Delhi to Jammu Tawi on 15.06.2004, after having travelled to New Delhi on 14.06.2004. The trial court further observed

that, from the defence itself, it could be gathered that the respondent admitted that his wife had drifted away from him after performing darshan and that he lost contact with her. He also sought to establish, through suggestions put to the father of the deceased, that he had telephoned and informed him about her going missing. Examining this material in light of the testimony of DW Inder Kumar and DW Bhaya Lal, it is clearly established that the deceased had accompanied the respondent to Vaishno Devi to pay obeisance. Thereafter, she was either lost or killed, as both defence witnesses admitted that the deceased was not seen again after leaving with the respondent. Thus, the prosecution, both through its own evidence and through the cross-examination of the defence witnesses, proved that the deceased had gone with the respondent to Vaishno Devi, from where her body was recovered on 18.06.2004.

34. PW Abdul Gani, PW Atta Mohd., PW Raju and PW Kewal Krishan, all stated that the body of the deceased was recovered from a place 60 to 70 feet downhill. According to the prosecution, the body remained unidentified and was cremated as such, though photographs and the apparel worn by the deceased were preserved. The respondent claimed that he had tried to contact the police authorities to ascertain the whereabouts of the deceased, but no material has been produced by him to substantiate this claim. On the contrary, the prosecution, through its witnesses, established that the body could be identified only after registration of the FIR and the arrest of the accused, which led to the recovery of the deceased's apparel. Once the defence admitted that the deceased had gone with the respondent to Vaishno Devi, the issue of

whether she had actually gone there, and whether the recovered body was that of the deceased, loses significance. Such admission is the best piece of evidence, and the suggestions made by the respondent to prosecution witnesses only show that he sought to prove he had made efforts to trace the deceased, which he miserably failed to establish. On the other hand, almost all prosecution witnesses categorically deposed that no missing report regarding the deceased had been lodged. In his statement under Section 342 Cr.P.C., the accused, when confronted with the evidence, denied making any extra-judicial confession before the Army and termed the incident false. He feigned ignorance about the whereabouts of his wife and claimed that the witnesses had deposed falsely. When specifically asked about the recovery of the body of the deceased from Vaishno Devi, he again pleaded ignorance as to how she had died.

35. From the aforesaid discussion, it is quite apparent that, though the demand of dowry is not proved, however, it is proved beyond doubt that the deceased had gone with the respondent to Vaishno Devi, from where her dead body was recovered on 18.06.2004. According to the prosecution, the respondent, after availing 59 days' leave, had joined his Unit on 21.06.2004, i.e., after 4 days of the killing of the deceased. The prosecution claims that on reporting back duty, the respondent made an extra-judicial confession before PW Vijay Shanker, about the killing of his wife, who took the respondent before Major C.S. Sidhu and then later before the Commanding Officer, Colonel A.P. Singh, where the respondent confessed to the killing of the deceased. PW Vijay Shanker has been declared hostile; however, in cross-examination, he admits that,

though he did not enquire from the respondent as to how his wife died, however, the accused admitted before him to having killed his wife and that he had come back after killing his wife.

36. PW Major C.S. Sidhu, the Platoon Commander, deposed that Havaladar Vijay Shanker had brought the respondent before him, where the respondent admitted that, since he considered his wife characterless and suspected her of having illicit relations with another person, he first took her to Delhi and attempted to kill her in a hotel but failed. He then took her to Vaishno Devi and, at Behro Ghati, after administering her an intoxicating tablet which rendered her unconscious, threw her down the cliff. This confession, according to the witness, was reiterated by the respondent before Colonel A.P. Singh. PW Major Sidhu was cross-examined, but he maintained that the respondent confessed to killing his wife. Although Colonel A.P. Singh was not produced as a witness, Lieutenant Colonel J.S. Matang, Adjutant of 32 RR, testified that a communication was sent to the SHO, Police Station Ram Munshi Bagh, informing him of the confession made by the respondent. The trial court, however, disbelieved the extra-judicial confession on the ground that such evidence is inherently weak, lacked a written record, and was not corroborated by any other evidence of the respondent having made such a confession.
37. The law regarding extra-judicial confession is now well settled., Apex Court in ***“Balwinder Singh v. State of Punjab”*** 1996 SCC (Cri) 59, stated the principle as under: -

“10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

38. Again, while explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, the Apex Court in ***“State of Rajasthan v. Raja Ram”*** AIR2003 SC 3601, observed as under: -

“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”

39. The Apex Court further observed that ***“such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.”***

Again, in ***“Sansar Chand v. State of Rajasthan”*** (2010) 10 SCC 604, the Apex Court, while reviewing law on the subject, went on to observe ***“there is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material.”*** In the latest pronouncement in ***“Subramanian v. State of Karnataka (Supra)”*** dealing with the subject, the Apex Court has held: -

“55. Considering the admissibility and evidentiary value of extra judicial confession, after referring to various judgments, in Sahadevan and Another v. State of Tamil Nadu, (2012) 6 SCC 403: (AIR 2012 SC 2435), this Court held as under:

“15.1. In Balwinder Singh v. State of Punjab [1995 Supp (4) SCC 259: 1996 SCC (Cri) 59]: (AIR 1996 SC 607) this Court stated the principle that: (SCC p. 265, para 10)

“10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in State of Rajasthan v. Raja Ram [(2003) 8 SCC 180: (AIR 2003 SC 3601): 2003 SCC (Cri) 1965] stated the principle that: (SCC p. 192, para 19)

“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”

The Court further expressed the view that: (SCC p. 192, para 19)

“19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an un-truthful statement to the accused....”

XXXX

15.6. Accepting the admissibility of the extra-judicial confession, the Court in Sansar Chand v. State of Rajasthan [(2010) 10 SCC

604: (2011 AIR SCW 372): (2011) 1 SCC (Cri) 79] held that: (SCC p. 611, paras 2930)

“29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore [(1970) 2 SCC 105 : 1970 SCC (Cri) 320] : [AIR 1971 SC 1871], Mulkh Raj v. State of U.P. [AIR 1959 SC 902 : 1959 Cri LJ 1219], Sivakumar v. State [(2006) 1 SCC 714 : (AIR 2006 SC 653) : (2006) 1 SCC (Cri) 470] (SCC paras 40 and 41 : AIR paras 41 and 42), Shiva Karam Payaswami Tewari v. State of Maharashtra [(2009) 11 SCC 262 : (AIR) 2009 SC 1692) : (2009) 3 SCC (Cri) 1320] and Mohd. Azad v. State of W.B. [(2008) 15 SCC 449: (2009) 3 SCC (Cri) 1082]: (AIR 2009 SC 1307)]”

[Emphasis supplied]

56. It is well settled that conviction can be based on a voluntary confession, but the rule of prudence requires that wherever possible, it should be corroborated by independent evidence. Extra extrajudicial confession of the accused need not in all cases, be corroborated. In *Madan Gopal Kakkad v. Naval Dubey and Another*, (1992) 3 SCC 204: (1992 AIR SCW 1480), this Court after referring to *Piera Singh and Others v. State of Punjab*, (1977) 4 SCC 452: (AIR 1977 SC 2274), held that the law does not require that the evidence of an extra judicial confession should in all cases be corroborated. The rule of prudence does not require that every circumstance mentioned in the confession must be separately and independently corroborated.

40. On the strength of aforesaid legal pronouncements, we proceed to examine the merits of the extra-judicial confession sought to be attributed against the respondent/accused. At the outset, we have noticed that three

officials, who the prosecution had led to prove the extra-judicial confession of the accused, are the army officials under whom the respondent had served or was serving, i.e., PW Major C.S. Sidhu, PW Subedar Vijay Shanker and PW Lieutenant Colonel J.S. Matang.

41. As per the communication dated 25.06.2004, the respondent who had availed 59 days' leave, was back to his Unit on 21.06.2004 and back on duty he is alleged to have made confession before the army officials to have murdered his wife on 17.06.2004 at about 09:45 Hours, near Behro Nath Temple, Vaishno Devi, Katra after having administered some pesticide in the form of tablet and, subsequently, on she become unconscious, threw her body down the cliff. PW Subedar Major Vijay Shanker was the immediate officer of the respondent, before whom he reported back on duty. This witness, though, has been declared hostile, but during cross-examination, it has been elicited from his narration that the respondent did tell him to have given an intoxicating tablet to Lovely Devi, who became unconscious and then he strangled her to death. Whereas, PW Major C.S. Sidhu is categorically found narrating that it was the Platoon Commander (PW Vijay Shanker), who had brought the respondent before him and in his presence the respondent disclosed that he was doubting the character of his wife as she was having illicit relations and on the pretext of visiting Vaishno Devi temple, he brought her there and took her to Behro Nath temple. There, he gave her some intoxicating tablet, as a result, she became unconscious, and thereafter, he threw her down. PW J.S. Matang, has corroborated this aspect by stating that the communication dated 25.06.2004 was sent by the Army Unit to

the Police Station concerned by informing them about the killing of the deceased by the respondent.

42. It was argued by the counsel for the respondent that the communication dated 25.06.2004 has neither been exhibited nor proved, so it cannot be relied upon. It is true that during trial the communication dated 25.06.2004 has not been exhibited, however, PW Major C.S. Sidhu has been, categorically found narrating that the then C.O. A.P. Singh, after the respondent confessed, ordered that he be detained in quarter guard and also instructed the Adjutant Major A. Mukherji to inform the Police by lodging an FIR, which communication is on record and it is on that basis that the SHO, Police Station, Ram Munshi Bagh forwarded that communication to the SHO, Police Station, Katra for further course of action because the proceedings under Section 174 Cr.PC. had been initiated by the latter in this regard. Merely because the letter dated 25.06.2004 has not been exhibited, would not wash away its contents because PW Major C.S. Sidhu and the other two witnesses are categorically found narrating that it was on the extra-judicial confession of the accused (respondent) that led to he being detained in quarter guard and then handed over to the Police. What is most relevant to examine here is whether the confession made is legally sustainable or not. Much thrust has been laid by the respondent that no such confession was made, and even if the same is accorded to be true, that is not sustainable in the eyes of the law because the army officers were senior to the respondent; thus, they could procure any confession. The argument so advanced, though, has

substance, but we do not subscribe to the view of the trial court that the confession so made is weak in itself.

43. The testimonies of the three senior Army officials, who were superior officers of the respondent, have been carefully examined. There is nothing on record to indicate that any of them bore ill will or animosity towards the respondent to falsely implicate him. On the contrary, the killing of the deceased stands fairly admitted by PW Vijay Shanker, while PW Major C.S. Sidhu has corroborated the extra-judicial confession made by the respondent, and Lt. Col. J.S. Matang has affirmed the authenticity of the official communication issued by Rastriya Rifles, where the respondent was serving at the relevant point of time. The contention of the respondent that the prosecution, having failed to establish the precise nature of the pesticide or intoxicant administered to the deceased, renders the extra-judicial confession unworthy of reliance, cannot be accepted. Though indeed, the prosecution could not establish the specific substance administered, this lapse by itself does not efface the evidentiary value of the extra-judicial confession. Had the viscera of the deceased been preserved, further corroboration may have been possible, but owing to the body remaining unidentified for some time, decomposition set in and the same was cremated. The explanation offered by the prosecution for the non-preservation of viscera is plausible and cannot be construed as fatal. At the stage of recovery, the circumstances suggested a fall from height, which may have reasonably persuaded the authorities to treat the death as non-suspicious and thereby omit viscera preservation. Such a lapse on the part of the Medical Officer is at best procedural and cannot be held to

vitiating the otherwise consistent and credible evidence on record. Accordingly, the extra-judicial confession, being voluntary, corroborated and not tainted by any circumstance of suspicion, retains its probative value notwithstanding the absence of scientific proof regarding the intoxicant administered. Even otherwise also it is for the respondent to explain, as to what led to the death of the deceased because she was accompanying with him to Vaishno Devi and immediately after their visit her dead body was found 50 to 60 feet down the nallah, whereas, the respondent was seen nowhere around the body of the deceased or to have taken any steps to ascertain the whereabouts of his wife. In this regard, there is no cogent explanation by the respondent that would necessarily invite adverse inference against him, which aspect we would be dealing with in the later part of our reasons.

44. The credibility of the extra-judicial confession has been assailed by the defence. However, on scrutiny of the evidence, we find that the defence has not been able to impeach the testimony of PW Major C.S. Sidhu, PW Lt. Col. J.S. Matang, or PW Subedar Vijay Shanker. These witnesses had no motive to falsely implicate the respondent in the charge of killing his wife, nor has any enmity or bias been attributed to them. Their depositions appear fair, unbiased and free from any taint of untruthfulness. They have consistently stated that the respondent confessed to them, admitting to having killed his wife during a visit to Vaishno Devi. The recovery of the deceased's body from a *nallah* with multiple fractures further corroborates the confession. Significantly, the conduct of the respondent in absenting himself from the spot is wholly inconsistent with natural human

behaviour. Had the death been accidental or caused by a mishap, the respondent, as a husband, would not have abandoned his wife; rather, he would have remained present and taken all possible steps to procure immediate medical assistance. His absence from the scene, therefore, lends further assurance to the prosecution's case and fortifies the evidentiary value of the extra-judicial confession.

45. The medico-legal opinion describes that the death had taken place around 96 Hours before the postmortem, which leads to the probability that the death had taken place during the intervening night of 17th/18th June, 2004. The fact that the respondent tried to first project that the deceased had drifted away, and then that he did not go to Vaishno Devi and that she went on her own. All these inconsistent stands taken by the respondent add as additional material against him to warrant drawing only the conclusion that it is the respondent alone who was behind the death of the deceased.
46. According to the prosecution, the respondent suspected the fidelity of his wife. Exhibit EXPWMP-1 reveals that, upon recovery of the bag belonging to the deceased, certain personal effects, including her apparel, railway tickets and handwritten letters, were seized. PW Ashok Kumar, the father of the deceased, identified the handwriting as that of his daughter. A close examination of the letters discloses that the deceased professed deep love for the respondent, expressly asserted that she was not unfaithful to him, expressed remorse for any past conduct, and sought to reconcile by pleading for forgiveness. This emotional outreach must be assessed in the backdrop of the respondent being on 59 days' leave,

during which period, due to matrimonial discord, the deceased had been residing with her parents. PW Ashok Kumar deposed that the respondent initially deputed his brother to fetch her, and when that failed, he himself came to the parental home and took the deceased back. It was alleged that during this interval, the deceased had gone out with a boy from her Village, which gave rise to suspicion in the respondent's mind. Although, there is no substantive evidence proving such an allegation, the circumstances suggest that the respondent harboured doubts regarding her character. This inference is fortified by the tenor of the letters, wherein the deceased repeatedly implored the respondent to forgive her. Such forgiveness may have been sought either for her perceived misconduct or for her prolonged stay at her parents' house. While the charge of dowry demand or of grave matrimonial discord is not established, the correspondence authored by the deceased, recovered contemporaneously with her belongings, unmistakably demonstrates that she had performed some act which was disapproved of by the respondent, on account of which she was appealing for pardon. The contents of the letters, thus, provide a vital insight into the strained matrimonial relationship and the state of mind of both the deceased and the respondent before the incident.

47. The respondent has categorically denied the existence of any matrimonial discord with the deceased, as also the allegation that he doubted her fidelity, and has further sought to feign ignorance regarding the circumstances of her death. The evidence, however, proves beyond doubt that the deceased had accompanied the respondent to Vaishno Devi on 17th June, 2004. The railway tickets recovered establish that the deceased

travelled with the respondent from her parental home to Delhi on 14th June, 2004, thereafter to Jammu on 15th June, 2004, and finally reached Katra on 17th June, 2004, for the pilgrimage. It stands established that during the intervening night of 17th/18th June, 2004, the incident occurred, after where to the respondent rejoined his Army Unit on 21st June, 2004. The extra-judicial confession was made by him between 21st and 25th June, 2004, initially before Hav. PW Vijay Shanker and thereafter before his senior officers. The probabilities emerging from the circumstances are that, after causing the death of his wife, the respondent, upon reflecting over the letters written by her and being overcome with remorse, underwent an emotional outburst and, in that state of mind, confessed his guilt before the Army officials. Being a serving Army officer, it is reasonably plausible that he made such a confession in the hope that his superior officers might shield or protect him from civil consequences. To his misapprehension, however, he was placed under quarter guard, and the matter was duly reported to the local police.

48. As discussed above, we do not find any reason to disbelieve the confession made by the respondent before the army officials, and evidence to that extent is not only convincing but completely reliable. All three witnesses have been cross-examined by the defence, but it has not been able to impeach their credibility. At the cost of repetition, the army officials would never have condoned the acts of the respondent; thus, they immediately apprised the local police about the confession. We see no convincing reason given by the trial court to disbelieve the extra-judicial confession made by the accused. The confession, so made, is found to be

reliable and is from the mouth of the witnesses who appear to be unbiased, not even remotely inimical to the respondent/accused and in respect of these witnesses, nothing is brought to attribute untruthfulness on their part.

49. The trial court had observed that the prosecution failed to establish that the respondent had earlier visited the shrine of Mata Vaishno Devi or that he was aware of the location being suitable for execution of his plan. Such reasoning is untenable. The respondent, being an active Army personnel, can reasonably be presumed to know of the existence and location of the Shrine. The incident itself occurred in secrecy, as is evident from the fact that the body of the deceased, recovered from the cliff on 18.06.2004, remained unidentified for several days. It is significant that, but for the extra-judicial confession made by the respondent, the identification of the deceased would have continued to remain shrouded in oblivion, since no articles capable of disclosing her identity were recovered contemporaneously with the body. The conduct of the respondent further reveals that he misled even the father of the deceased and persons in the locality by representing that his wife had separated from him at Vaishno Devi and was untraceable. The trial court's observation that the prosecution had not shown any effort by the respondent to trace or locate the deceased, is wholly misplaced. The proceedings under Section 174 Cr.PC. categorically reveal that no missing report of any woman was lodged with Police Station Bhawan, nor did any person come forward to identify the deceased until much later. These circumstances unequivocally point to the fact that the events which transpired during the intervening

night of 17/18.06.2004 were within the exclusive knowledge of the respondent, who was last seen accompanying the deceased.

50. Given the topography of Vaishno Devi Shrine, it was least expected that the respondent would have committed the act of throwing the deceased in full public view or in presence of passersby, rather it was quite probable that he must have waited for right opportunity to take the call and it is during the intervening night that he got an opportunity to do away with the life of the deceased.
51. In *“Trimukh Maroti Kirkan v. State of Maharashtra”* (2006) 10 SCC 681, in a case relating to homicidal death confined to a secret place, it was held:

“14.If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions [1944 AC 315: (1944) 2 All ER 13 (HL)] - quoted with approval by Arijit Pasayat, J. in [19] State of Punjab v. Karnail Singh [(2003) 11 SCC 271: 2004 SCC (Cri) 135].) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and

circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime....”

52. Again, in “*State of W.B. v. Mir Mohammad Omar and Ors.*” (2000) 8 SCC 382, the assailants forcibly dragged the deceased from the house where he was taking shelter on account of the fear of the accused, and took him away at about 2:30 in the night. The next day in morning, his mangled body was found lying in the hospital. The Trial Court convicted the accused under Section 364, read with Section 34 of the IPC, which conclusion was overruled by the High Court. The Apex Court, taking note of the Section 106 of the Evidence Act, laid down that if deceased was found murdered within a short time after having been lastly seen in the company of the accused and immediately thereafter her death takes place, would lead to draw presumption that the death of the deceased had strong connection with the accused, and reference can be drawn by taking aid of Section 106 Evidence Act.
53. In the present case, the respondent, in his statement under Section 342 Cr.P.C., has completely denied knowledge of the incident and feigned ignorance regarding the circumstances of the death of his wife. However, it stands established beyond doubt that the deceased had accompanied him to the shrine of Mata Vaishno Devi, and that immediately thereafter, on 18.06.2004, her mangled body was recovered from the *nallah* below the cliff near Behro Ghati. The body remained unidentified for four to five days and could be established as that of the deceased only upon communication received from the Army. Indeed, but for the extra-judicial confession of the respondent, the identity of the deceased may never have been ascertained. So much so, the body was subjected to last rites as that of an unknown woman before identification, although she had

accompanied her husband to pay obeisance at the shrine. These circumstances, being within the special knowledge of the respondent, cast a clear burden upon him under Section 106 of the Evidence Act, which he has failed to discharge. Further, the evidence reveals that the deceased, owing to matrimonial discord, had been residing at her parental home. The respondent, assuring her father that he had secured accommodation at his Unit at Srinagar and would now be taking care of her, persuaded the parents to send the deceased with him. The letters authored by the deceased, recovered from her bag, unmistakably show her deep affection towards the respondent. They also indicate that, possibly on account of a lapse on her part, the respondent had developed suspicion and ill-will towards her, and the deceased, in turn, was pleading with him to pardon her and expressing her willingness to reform herself. These circumstances, taken cumulatively, supply a strong motive and connect the respondent with the homicidal death of the deceased.

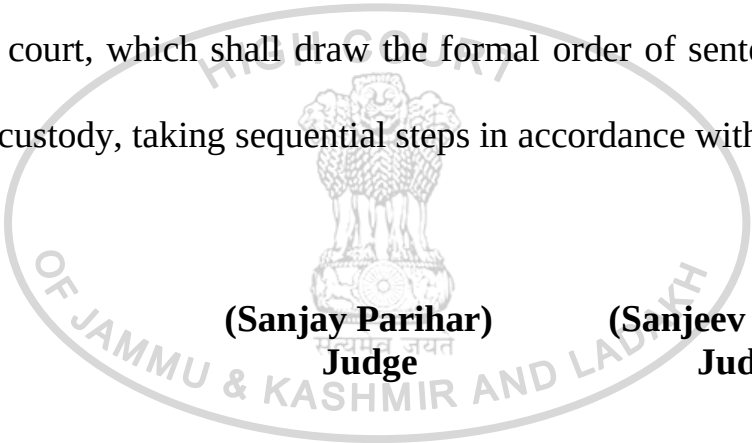
54. The aforesaid facts, when considered in conjunction with the circumstance of the respondent having taken the deceased to Vaishno Devi, conclusively establish an unbroken chain of events pointing towards the respondent's premeditated intention of taking the deceased to a secluded place with the object of extinguishing her life. It is a matter of common human experience that army personnel, by virtue of their service exigencies, often remain away from their families; consequently, any perceived domestic discord or suspicion may escalate ill-will or uncontrollable rage. In the present case, the respondent appears to have succumbed to such criminal proclivity, having resolved to punish the

deceased for her perceived betrayal, while the deceased, in contrast, was endeavouring to reconcile and restore harmony in the relationship. It stands further established that only after the deceased was thrown down the cliff and the respondent returned to his Unit at Srinagar, his conscience, tempered by the discipline of a soldier, yielded to remorse, compelling him to make a voluntary confession before his fellow army officials. The possibility that the respondent believed his superiors would shield him from the legal consequences of his act cannot be discounted; however, contrary to such expectation, he was placed under quarter guard, and the matter was duly reported to the civil authorities. In this backdrop, the principle enshrined under Section 106 of the Evidence Act assumes pivotal significance, for the facts and circumstances attending the death of the deceased, having occurred in the exclusive company of the respondent during the intervening night of 17th/18th June, 2004, lay within his special knowledge. His failure to render any cogent explanation, coupled with his bare denial of the incriminating circumstances, thus operates gravely to his disadvantage and lends further assurance to the prosecution's case.

55. For the reasons aforesaid, we are constrained to hold that the reasoning adopted by the trial court is manifestly erroneous, having failed to properly appreciate the evidence on record in its correct perspective. Consequently, the finding of acquittal is unsustainable in law. The prosecution's evidence unerringly points towards the respondent as the perpetrator, who, under the pretext of taking his wife to pay obeisance at the revered shrine of Mata Vaishno Devi, harboured ill will on account of

her perceived betrayal, and with the intention of causing her death, pushed her down the cliff. The irresistible conclusion is that the respondent is guilty of culpable homicide amounting to murder, thereby attracting the offence punishable under Section 302 RPC. Considering, however, that the occurrence is of 17.06.2004 and the respondent has undergone the ordeal of trial and the apprehension of reversal of his acquittal for nearly two decades, such a mitigating circumstance weighs with us in the matter of sentence.

56. Accordingly, while overturning the acquittal, we sentence the respondent to undergo imprisonment for life and to pay a fine of Rs. 5,000/-. The appeal is thus allowed. The respondent is directed to surrender forthwith before the trial court, which shall draw the formal order of sentence and commit him to custody, taking sequential steps in accordance with law.



(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
11.09.2025
Pawan Angotra

Whether the order is speaking? : Yes
Whether the order is reportable? : Yes