

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.988 of 2009

(AGAINST THE JUDGMENT OF CONVICTION DATED 16.09.2009 AND ORDER OF SENTENCE, DATED 17.09.2009, PASSED BY SHRI SUDHAKAR SINGH, ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT NO. 3, SHEOHAR AT SITAMARHI, IN SESSIONS TRIAL NO. 79 OF 2009, ARISING OUT OF PURNAHIYA POLICE STATION CASE NO.50 OF 2008.)

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Raju @ Mukhlal @ Beldar Paswan, son of Sri Jaldhar Paswan,
resident of Basant Patti, P.S. Purnahiya, District-Sheohar.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : None

For the Respondent : Mr. Ajay Mishra, A.P.P.

Mr. Sajid Salim Khan, Advocate, Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 09-07-2015

Under the judgment, dated 16.09.2009, passed,
in Sessions Trial No. 78 of 2009, by learned Additional Sessions
Judge, Fast Track Court No.3, Sheohar, the accused-appellant,
Raju @ Mukhlal @ Beldar Paswan, stands convicted under
Section 302 of the Indian Penal Code. In consequence of his
conviction, the accused-appellant stands, under the order,
dated 16.09.2009, sentenced to suffer imprisonment for life
and pay fine of Rs. 10,000/- and, in default of payment of fine,
undergo rigorous imprisonment for a period of one year.

2. The case of the prosecution, as unfolded by

the First Information Report, may, in brief, be described as under:

(i) Deceased Lalita Devi, daughter of the informant, Jagarnath Paswan (PW 6), was given in marriage to accused Raju @ Mukhlal @ Beldar Paswan about 15 years before her death. After her marriage, Lalita Devi used to live at her matrimonial house at Basant Patti. About four years before her death, Lalita Devi's husband, accused Raju, left his village to go to Punjab for work and he did not come back until a little over one week before Lalita Devi's death.

(ii) During the period her husband remained away from his home, Lalita Devi worked as a day labour and maintained, with her meager earning, herself and her female child. About a month before her death, Lalita Devi came to her parental house for treatment of her illness and started living there.

(iii) About 8 (eight) days before her death, Lalita Devi's husband (i.e., the accused Raju) returned from Punjab and repeatedly made telephone calls to Lalita Devi asking her to come back to her matrimonial house. About 6 (six) days before her death, Lalita Devi went back to her matrimonial house and started living with her husband.

(iv) On 21.10.2008, at about 5 O'clock in the morning, accused came to the house of Mohit Paswan (PW 3)



looking for Mohit Paswan. As Mohit Paswan was not at home, he (PW 3) having left for the field to answer nature's call, his wife, Ram Pati Devi (PW 2), enquired from the accused as to why he was looking for her husband (PW 3). Responding to the query so made, the accused replied by saying that Lalita Devi had died. Ram Pati Devi (PW 2), then, enquired from the accused as to how Lalita Devi had died. As the accused left without answering the query, PW 2 went to the house of the accused and found Lalita Devi lying dead with her tongue protruding out of her mouth with blood coming out from her mouth. PW 2 also noticed marks of injury around the neck of the said deceased.

(v) PW 2, then, went back to her house. In the meanwhile, her husband (PW 3) arrived at home having answered nature's call, Ram Pati Devi (i.e., PW 2), then, narrated to her husband, Mohit Paswan (PW 3), as to what had happened, Mohit Paswan, then, went to the house of the accused and saw Lalita Devi lying dead there with marks of injury around her neck with bleeding from her nose. Mohit Paswan (PW 3), then, informed Lalita Devi's father, Jagarnath Paswan (PW 6), about the death of Lalita Devi.

(vi) On receiving the information, PW 6 came rushing to the house of the accused. In the meanwhile, other co-villages of the accused also came to, and assembled at, the

house of the accused; but the accused was not traceable.

(vii) On receiving the information as regards the death of Lalita Devi, the Investigating Officer (PW 7) came to the house of the accused, held inquest over the said dead body, which was, later on, subjected to *post mortem* examination. On the arrival of Investigating Officer (PW 7), at the house of the accused, PW 6, father of the deceased, reported before the police as to how his daughter, Lalita Devi, happened to live and die at her husband's house. The information, so given, was reduced into writing in the form of *fardbeyan* and treating the said *fardbeyan* as the First Information Report, Purnahiya Police Station Case No.50 of 2008, under Section 302 of the Indian Penal Code, was registered against accused Raju @ Mukhlal @ Beldar Paswan.

(viii) As the accused was not traceable after several days of the occurrence, his house was raided at night by the police and the accused was apprehended. On completion of investigation, a *charge sheet* was laid, under Section 302 of the Indian Penal Code, against the accused-appellant.

3. At the trial, when a charge, under Section 302 of the Indian Penal Code, was framed against the accused-appellant, Raju @ Mukhlal @ Beldar Paswan, he pleaded not guilty thereto.



4. In support of their case, prosecution examined altogether 7 (seven witnesses). The accused was, then, examined under Section 313 (1)(b) of the Code of Criminal Procedure, 1973, and in his examination aforementioned, the accused, while pleading that he had not put to death his wife, stated that he was sleeping at a distance of about 4-5 cubits from the place, where his wife was sleeping, and that he was lying unconscious as someone had made him drink some medicine and when he regained his consciousness, he found his wife lying dead. No evidence was adduced by the defence.

5. Having, however, found the accused guilty of the offence, which he stood charged with, learned trial Court convicted him accordingly and passed sentence against him as mentioned above.

6. Aggrieved by his conviction and the sentence, which has been passed against him, the accused, as a convict, has preferred this appeal.

7. We have heard Mr. Sajid Salim Khan, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

8. While considering the present appeal, let us, first, refer to, and deal with, the evidence of the doctor (PW 1),

who had, admittedly, performed *post mortem* examination on Lalita Devi's dead body on 21.10.2008 at 03:35 PM. According to the evidence of this witness, on conducting the *post mortem* examination, he found, on Lalita Devi's dead body, following *ante mortem* injuries: -

"External Findings :-

(i) Both eyes closed tongue protruded, clinched, clinched between teeth. Bleeding from mouth, face swollen, dark blackish bruise present in front of neck. No other external injuries found on her body.

Rigormortis absent un upper limb, present in both lower limb.

Internal Findings :-

(ii) Opening of skull- cronium intact, brain matter congested.

Opening of neck- Echymosis present below skin over neck

Trachea depressed and congested.

(iii) Opening of thorax- both lungs intact and congested. Heart intact and chambers filled with blood.

(iv) On opening of abdominal cavity- all abdominall visceras intact and congested.

(v) Stomach contains semi-digested food particles.

(vi) Bladder partially filled.

(vii) Uterus normal in size."

9. In the opinion of the doctor, the cause of death was asphyxia leading to cardio-respiratory failure as a

result of *ante mortem* injury on the neck, which had been caused by strangulation with the help of a hard object, such as, pressing of neck by hands. The doctor has proved his *post mortem* report as Exhibit-1.

10. In the opinion of the doctor, the time elapsed since death was within 24 hours.

11. In his cross-examination, the doctor (PW 1) has admitted that he did not find any external injury on the neck of the deceased except the bruises nor did he find any circular mark around the neck. By the cross-examination of the doctor, the defence could not elicit anything, which could go to show that the findings of the doctor and/or his opinion, with regard to cause of death, were incorrect or improbable. In fact, the findings as well as the opinion with regard to the cause of death have remained unshaken. This apart, we, too, do not find anything inherently incorrect or improbable in the evidence given by the doctor.

12. Situated thus, it becomes clear that Lalita Devi's death was *homicidal* in nature.

13. The question, however, remains: whether the accused-appellant was the one, who has caused the death of Lalita Devi and thereby committed the offence of *murder* punishable under Section 302 of the Indian Penal Code?

14. Bearing in mind the medical evidence on



record, we, now, turn to the evidence of Ram Pati Devi (PW 2), wife of Mohit Paswan (PW 3). Her evidence is to the effect that one day, at about 5 o'clock in the morning, accused came to her house, on a bicycle, looking for her husband, Mohit Paswan, and when PW 2 asked the accused as to why he (accused) was looking for her husband, the accused replied by saying that her (PW 2's) niece, namely, Lalita Devi, had died and when she (PW 2) enquired from the accused as to how Lalita Devi had died, the accused remained silent.

15. It is in the evidence of PW 2 that she went to the house of the accused and found Lalita Devi lying dead in supine condition with her tongue protruding out of her mouth and blood oozing out of her mouth with black marks on her neck. It is also in the evidence of PW 2 that she, then, came home and reported to her husband (PW 3) what had happened, whereupon her husband, too, saw Lalita Devi's dead body and, thereafter, she (PW 2) called her brother, namely, Jagarnath Paswan (PW 6), i.e., father of the deceased, who, too, saw Lalita Devi's dead body and, then, First Information Report was lodged with the police.

16. PW 2 has clarified that accused had gone to Punjab and had come back after four years and that six days before the occurrence and, then, brought Lalita Devi to his house.

17. It is the further evidence of PW 2 that accused had fled away from the village.

18. Lending support to the evidence of his wife, Ram Pati Devi (PW 2), PW 3 (Mohit Paswan) has deposed that on the day of occurrence, at about 5 o'clock in the morning, when he returned back home after answering the call of nature, his wife (PW 2) told him that Raju had killed his wife, whereupon, he (PW 3) went to the house of the accused and saw Lalita Devi lying dead in supine condition at her house with a black mark around her neck and blood was oozing out of her nose.

19. It is in the evidence of PW 3 that he informed Lalita Devi's father on telephone about the occurrence and Lalita Devi's father (PW 6) came; police, too, came and recorded *fardebayan* of PW 6.

20. It is also in the evidence of PW 3 that the police prepared the inquest report.

21. As regards the accused, PW 3 has deposed that accused came from Punjab about six days before the occurrence and called Lalita Devi from her parents house.

22. Close on the heels of the evidence of PW 2 and PW 3, Jagarnath Paswan (PW 6), father of the deceased, has deposed that Lalita Devi's marriage was solemnized with the accused about 10-15 years before her death and about five



years before her death, the accused left for Punjab and did not come back to his house for the whole period of five years nor did he send any money to meet out the expenses of his family with the result that Lalita Devi had to work as a day labour to maintain herself and her five year old daughter. It is in the evidence of PW 6 that the accused came back from Punjab about six days prior to the occurrence and by making telephone calls, the accused insisted upon his wife to come back to his house and though PW 6 had initially refused, yet on repeated insistence of the accused that he was not well, he (PW 6) sent his daughter, i.e., Lalita Devi, to the house of the accused.

23. It is also in the evidence of PW 6 that PW 3 informed him (PW 6) on phone that Lalita Devi had died, whereupon he went to the house of the accused and saw Lalita Devi's dead body.

24. PW 6 has deposed that police came to the house of the accused, he (PW 6) reported the entire occurrence to the police and that his statement was recorded by police, which he signed. This signed information, which had been reduced into writing by the police, has been treated to be first information of the case.

25. Broadly in tune with the evidence of PW 2, PW 3 and PW 6 is the evidence of PW 4 inasmuch as PW 4 is

also one of the witnesses, who had gone to the house of the accused on receiving the informant that Lalita Devi had been killed by her husband and, on arriving at the house of the accused, he saw Lalita Devi's dead body with a black mark around her neck and her tongue protruding out of her mouth.

26. As far as the Investigating Officer is concerned, it is his evidence that on 21.10.2008, he recorded the *fardbeyan* of Jagarnath Paswan (PW 6). The *fardbeyan* has been proved as Exhibit-4 and the signature of Jagarnath Paswan (PW 6) has been proved as Exhibit-4/1.

27. By the cross-examination of PW 2, 3 and 6 nothing could be elicited by the defence to show as to what has been deposed by them, which was untrue or false. In fact, all the materials pieces of their evidence remained intact and unshaken. The Investigating Officer's evidence also lent support to the evidence of PW 2, 3 and 4 that Lalita Devi's dead body was found at her husband's house, but the accused was not found there. The Investigating Officer has accordingly deposed that accused was absconding and it was after conducting raid at night that the accused was apprehended at his house.

28. From the evidence, which we have discussed above, what surfaces unscathed and unshaken is that the deceased was married to the accused, and the accused went to



Punjab leaving Lalita Devi with a young female baby and he did not provide her any maintenance during the period he remained away from his house and it was after four years that he came back to his house. During the period of absence of the accused, Lalita Devi used to work as a day labour and, somehow, maintained herself and her daughter. Seeing their condition, PW 6, i.e., the father of Lalita Devi, brought her with her child to his home. A few days before Lalita Devi's death, her husband, i.e., the accused-appellant, returned back to his village, he made repeated telephone calls to the house of PW 6 requesting Lalita Devi to come back. Persuaded by the repeated calls made by the accused, Lalita Devi went to live with the accused. At the time, when Lalita Devi was so living with the accused, the accused came, at about 5 o'clock in the morning, to the house of PW 3, looking for PW 3, but PW 3 had gone to answer the call of nature. As her husband (PW 3) was not at home, PW 2 enquired from the accused as to why he was looking for her husband and the accused replied by saying that Lalita Devi had died.

29. Curiously enough, when PW 2 enquired from the accused as to how Lalita Devi had died, the accused did not say anything, whereupon PW 2 went to the house of the accused and found Lalita Devi lying dead in supine condition with her tongue protruding out of her mouth and blood oozing



out of her mouth. PW 2, then, came back home and narrated to her husband, i.e., PW 3, as to what had happened inasmuch as PW 3 had, in the meanwhile, returned home after having answered the nature's call. On receiving the news of Lalita Devi's death, PW 3 went to the house of the accused and he, too, saw Lalita Devi's dead body lying in supine condition with black mark on her neck and bleeding from nose. Telephone calls were, then, made by PW 2 and PW 3 to Lalita Devi's father, i.e., PW 6, informing him about the death of Lalita Devi. On receiving the information, PW 6 rushed to the house of the accused. In the meanwhile, the police arrived at the house of the accused and, having found Lalita Devi dead, held inquest over the said dead body, which was subjected to *post mortem* and the *post mortem* examination revealed that Lalita Devi had died due to asphyxia leading to cardio-respiratory failure on account of strangulation by hard object, such as, pressing of neck by hands.

30. At the time of hearing of this appeal, it was raised by the learned *Amicus Curiae*, and rightly so, that the evidence, adduced by the prosecution, does not explain as to how the police came to know about the occurrence and how the Investigating Officer (PW 7) arrived at the house of the accused. The learned *Amicus Curiae* is also correct in making the submission that since PW 7 had arrived on receiving the



information about the death of Lalita Devi, the statement of PW 6, which had been recorded by PW 7, after his arrival at the house of the accused and after having seen Lalita Devi's dead body, could not have been treated as First Information Report of the case; rather, the said statement of PW 6 was nothing, but a statement recorded under Section 161 of the Code of Criminal Procedure.

31. Though we are satisfied that Exhibit-4 could not have been treated, and ought not to be treated, as First Information Report, the fact remains that notwithstanding the fact that the prosecution has not been able to prove as to what information had been received by PW 7, which prompted PW 7 to come to the house of the accused, what has remained unshaken in the evidence, adduced by the prosecution, is that the accused had gone to Punjab leaving his wife, Lalita Devi, and his female baby. During the period of 4 years that the accused remained away from his house, he did not pay anything for maintenance of his family with the result Lalita Devi was left to fend for herself and her child. Sometime before her death, Lalita Devi's father (PW 6) brought Lalita Devi home and while she was living there, the accused returned to his house from Punjab and made repeated calls to the house of PW 6 insisting upon Lalita Devi to come back. It was in such a situation that Lalita Devi went back to the house of the accused

to live with him. While they were so living together, the accused came to the house of PW 3, when PW 3 had gone to answer the nature's call. As the accused was looking for PW 3, PW 2, wife of PW 3, enquired from the accused as to why he was looking for her husband. To the query so made, the accused replied by saying that Lalita Devi had died. To the next query, which was, most naturally, made by PW 2, as to how Lalita Devi had died, the accused did not reply and left and since thereafter, the accused remained absconding until the time he was, in the light of the evidence of Investigating Officer (PW 7), apprehended by conducting a raid at his house. On coming to know that Lalita Devi had died, PW 2 went to the house of the accused and found Lalita Devi's dead body lying in the condition, as we have already described, having seen Lalita Devi's dead body, PW 2 returned home and, in the meanwhile, since her husband (PW 3) had returned home, PW 2 informed her husband (PW 3) about what had happened and, on receiving the information about Lalita Devi's dead, PW 3, too, went to the house of the accused and saw Lalita Devi's dead body lying there in the condition, which already stands described. It was thereafter that PW 6 was informed on telephone about Lalita Devi's death, his sister (PW 2) and his brother-in-law (PW 3), whereupon PW 6 arrived at the house of the accused and so arrived PW 7 and recorded the statement of

PW 6 as his *fardbeyan*.

32. With regard to the *fardbeyan*, we have already held that the *fardbeyan*, recorded by PW 7, could not have been treated as the First Information Report. In fact, the evidence on record does not disclose as to what information had been received by the police, which made PW 7 reach the house of the accused. Notwithstanding the fact that the *fardbeyan* of PW 6 is not the First Information Report and the First Information Report has not been proved on record, the fact remains that it is on the basis of the remaining evidence on record that the guilt or otherwise of the accused-appellant needs to be determined.

33. We may pause, at this stage, to point out that in the case at hand, there is no direct evidence, which would show that it was the accused, who had put to death his wife, Lalita Devi. The prosecution's case, therefore, depends on circumstantial evidence. The law with regard to circumstantial evidence is fairly well settled.

CIRCUMSTANTIAL EVIDENCE

34. The standard of proof required, for the purpose of convicting a person, on the basis of circumstantial evidence, has been laid down, with great clarity, in the case of **Hanumant Govind Nargundkar Vs. State of M.P.**, reported in **MANU/SC/0037/1952 : 1952 SCR 1091**, wherein the

Court has pointed out that the circumstances, which are relied upon, must be fully established and the chain of evidence, furnished by the circumstances so established, should make a complete case against the accused and shall not leave any reasonable ground for a conclusion consistent with the innocence of the accused. The relevant observations, appearing in **Hanumant Govind Nargundkar** (supra), read as under:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused"

35. Referring to the case of **Hanumant Govind Nargundkar** (supra), the Supreme Court, in **Sharad Birdhichand Sarda Vs. State of Maharashtra**, reported in **MANU/SC/0111/1984 : (1984) 4 SCC 116**, has pointed out

that what emerges from the above discussion is that in a case, based on circumstantial evidence, the circumstances from which the conclusion of guilt is required to be drawn shall be fully established and the facts, so established, shall be not only consistent with the hypothesis of guilt of the accused, but shall be inconsistent with any hypothesis of innocence of the accused.

36. Elaborately dealing with the principles, laid down in **Hanumant Govind Nargundkar** (supra), the Supreme Court, in **Sharad Birdhichand Sarda** (supra), pointed out, at para 152, thus:

"152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807 : SCC (Cri) p. 1047] Certainly, it is a primary principle that the accused must be and not merely may be guilty

before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

37. Referring to the case of **Hanumant Govind Nargundkar** (supra), the Supreme Court has pointed out, in **Deonandan Mishra Vs. The State of Bihar (MANU/SC/0030/1955 : AIR 1955 SC 801)**, too, that in a case of circumstantial evidence, not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. Referring to the facts of **Deonandan Mishra** (supra), the Supreme Court pointed out

that in a case like this, where various links have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and when he (accused) offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link, which completes the chain.

38. The case of **Joseph Vs. State of Kerala**, reported in **MANU/SC/0313/2000 : (2000) 5 SCC 197**, is a case, which is relevant, while considering the theory of last seen together. In **Joseph** (supra), the facts were, as noted by the Supreme Court, in its subsequent decision, in **State of Rajasthan Vs. Kashi Ram**, reported in **MANU/SC/8632/2006 : (2006) 12 SCC 254**, as under:

"20. In **Joseph s/o Kooveli Poulo Vs. State of Kerala MANU/SC/0313/2000 : (2000) 5 SCC 197**; the facts were that the deceased was an employee of a school. The appellant representing himself to be the husband of one of the sisters of Gracy, the deceased, went to the St. Mary's Convent where she was employed and on a false pretext that her mother was ill and had been admitted to a hospital took her away with the permission of the Sister in charge of the

Convent, PW-5. The case of the prosecution was that later the appellant not only raped her and robbed her of her ornaments, but also laid her on the rail track to be run over by a passing train. It was also found as a fact that the deceased was last seen alive only in his company, and that on information furnished by the appellant in the course of investigation, the jewels of the deceased, which were sold to PW-11 by the appellant, were seized. There was clear evidence to prove that those jewels were worn by the deceased at the time when she left the Convent with the appellant. When questioned under Section 313 Cr.P.C., the appellant did not even attempt to explain or clarify the incriminating circumstances inculcating and connecting him with the crime by his adamant attitude of total denial of everything. In this backdrop, the Court held:- Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see State of Maharashtra Vs. Suresh, MANU/SC/0765/1999 : (2000) 1 SCC 471). That missing link to connect the accused appellant, we find in this case provided by the blunt and outright denial of every one and all the incriminating

circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of Gracy.”

39. From the observations, made above, it becomes clear that when a fact is explainable and within the special knowledge of the accused, who faces trial, and the accused chooses not to offer explanation, it becomes an additional link in the circumstances in the sense that the omission to explain is a missing link, which may be treated to have been supplied for arriving at the answer, which the circumstantial evidence makes one reach.

40. In **Ram Gulam Choudhary & Ors. Vs. State of Bihar**, reported in **MANU/SC/0582/2001 : (2001) 8 SCC 311**, the Supreme Court has pointed out that it is permissible, in a given case, to draw an inference from the silence of an accused if the answer could be given by the accused alone even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt inasmuch as Section 106 would apply to cases, where prosecution successfully proves the facts from which a reasonable inference can be drawn.

41. In fact, the case of **Sahadevan @ Sagadevan Vs. State, represented by Inspector of Police,**

Chennai, reported in **MANU/SC/1067/2002 : (2003) 1 SCC 534**, is a case, which is closely akin to the case at hand, wherein the deceased was seen in the company of the appellant from the morning of March 5, 1985, till, at least, 5 pm on that day, when he was brought to his house and, thereafter, his dead body was found in the morning of March 6, 1985. In this fact situation, the Supreme Court observed:

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

42. Having taken into consideration the cases of **Joseph** (supra), **Ram Gulam** (supra) and **Sahadevan** (supra), the Supreme Court has pointed out, in **Kashi Ram** (supra), that Section 106 of the Evidence Act makes it clear that when any fact is especially within the knowledge of a person, the burden of proving that fact is on him.

43. Hence, observes the Supreme Court, in **Kashi Ram** (supra), that if a person is last seen with the



deceased, he must offer an explanation as to how and when he parted with the company of the deceased. The Supreme Court has, in fact, gone to the extent of observing that in such a case, the accused must furnish an explanation, which appears to the Court to be probable and satisfactory, and if the accused does so, he must be held to have discharged his burden; but if the accused fails to offer an explanation on the basis of the facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106. The Supreme Court has further pointed out, in **Kashi Ram** (supra), that if, in a case, resting on circumstantial evidence, the accused fails to offer reasonable explanation in discharging the burden placed on him by virtue of Section 106, his silence is an additional link in the chain of circumstances proved against him.

44. Clarifying the object of Section 106, the Supreme Court has laid down, in **Kashi Ram** (supra), that Section 106 does not shift the burden of proof in a criminal trial inasmuch as the burden of proof always rests on the prosecution, but it lays down the rule that when the accused does not throw any light upon the facts, which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link, which completes the chain. In coming to this conclusion,

the Court has referred to **Naina Mohamed (AIR 1960 SC 218)**. The relevant observations, appearing in **Kashi Ram** (supra), read as under:

"23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as

an additional link which completes the chain. The principle has been succinctly stated in Re. Naina Mohd. MANU/TN/0359/1959 : AIR 1960 Mad 218"

45. What emerges from the above discussion is that in a case, based on circumstantial evidence, the circumstances from which the conclusion of guilt is required to be drawn shall be fully established and the facts, so established, shall be not only consistent with the hypothesis of guilt of the accused, but shall be inconsistent with any hypothesis of innocence of the accused.

46. We may also hasten to point out that Section 106 does not shift the burden of proof in a criminal trial inasmuch as the burden of proof always rests on the prosecution, but it lays down the rule that when the accused does not throw any light upon the facts, which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link, which completes the chain.

47. In the backdrop of what have been indicated above, with regard to the principle governing proof of a fact by *circumstantial evidence*, let us, now, consider the questions put to the accused and his response thereto, while he (i.e., the accused-appellant) was being examined under Section

313 (1)(b) of the Code of Criminal Procedure. This examination reveals as follows:

"Q. 1) Have you heard the statement of witnesses?

Ans. Yes.

Q. 2) The charge against you is that you have strangled your wife, Lalita Devi, D/o Jagarnath Paswan, to death on 21.10.2008?

Ans. ***I have not killed her. I was sleeping, I do not know who killed her. I was sleeping at a distance of 4 to 5 cubits from the place where my wife was lying dead.***

Q. 3) Do you want to say anything in your defence?

Ans. ***I am not guilty. I have not killed her. I was made to drink medicine by someone. I was unconscious. I do not know who made me drink medicine.***

(Emphasis is added)

WHETHER LAW PERMITS USING OF ADMISSIONS OR CONFESSIONS MADE BY AN ACCUSED, DURING THE COURSE OF HIS EXAMINATION, UNDER SECTION 313 OF THE CODE OF CRIMINAL PROCEDURE, AND IF SO, HOW AND TO WHAT EXTENT?

48. Before we determine the effect of the replies of the accused in response to the queries made by the learned trial Court, while the accused-appellant was being examined under Section 313 (1)(b) of the Code of Criminal Procedure, it needs to be determined if law permits using of *admissions* or *confessions* made by an accused, during the course of his

examination, under Section 313 of the Code of Criminal Procedure, and if so, how and to what extent.

49. In view of the fact that in the statement, which has been recorded under Section 313(1)(b) of the Code of Criminal Procedure, the appellant has denied that he had killed, his wife, Lalita Devi, the question, which naturally arises, is as to whether, in the face of such denial, his statement recorded under Section 313(1)(b) of the Code of Criminal Procedure, could have been construed as his *admission*.

50. When an accused denies to have committed the offence charged with; but, while making such a denial, he admits certain incriminating facts, and if the facts, so admitted by the accused, suggest inference of his guilt or gives rise to inference of his guilt, can such a statement be used against such an accused.

MEANING OF ADMISSION

51. What, then, is *admission*? Whether an *admission* of a person is admissible only in a *civil proceeding* or in a *criminal proceeding* too?

52. *Admission* is defined by Section 17 of the Evidence Act as a statement, oral or documentary, or contained in electronic form, which suggests an inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances as specified in Sections 18, 19, 20

and 21.

53. A close reading of Sections 18, 19 and 20 of the Evidence Act clearly shows that the *admissions* made in various circumstances, as envisaged by Sections 18, 19 and 20, are admissible in suits or proceedings of civil or quasi-civil nature. Sections 22, 23 and 24 stipulates the circumstances where *admission* may not be allowed to be brought into evidence. That leaves us with Section 21, which reads as under:

"Section 21. Proof of admissions against persons making them, and by or on their behalf.- *Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:-*

- (1) *An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.*
- (2) *An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.*
- (3) *An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission."*



54. A close and patient examination of the provisions, contained in Section 21, clearly shows that though an *admission* cannot be proved by or on behalf of the person, who makes the *admission*, except in the cases as specified in Section 21, yet an *admission* is relevant and may be proved against a person, who makes it. There is nothing, in Section 21, indicating that Section 21 applies to civil proceedings only. Far from this, the illustrations, given in Section 21, make it more than abundantly clear that these illustrations are in the realm of criminal law and not necessarily confined to civil law. The illustrations read as under:

"(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, or can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produce a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day and indicating that the ship was not taken out of her proper course.

A may prove these statements, because they would be admissible between third parties, if he were dead, under Section 32 clause (2).

(c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory or conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it is counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration."

55. A close examination of the illustrations,

as given in Section 21, makes it more than abundantly clear that an *admission* of a fact can be used against the maker even in criminal law.

56. However, the *admission*, made in such a statement, which does not amount to *confession*, may, nevertheless, be admissible, under Section 21 of the Evidence Act, against an accused depending, of course, on the facts of given case, for, Section 21 permits such *admission* to be proved and the embargo, placed by Section 26, which prohibits *confession*, made by a person, "*whilst he is in custody of a police officer*" from being admitted into evidence, will not be attracted. The contours of Section 21 are not bounded by the limitations of the person being in the custody of the police officer. If an *admission*, made by an accused, while in the custody of police, to a person, other than police officer, amounts to *confession*, such *admission* would transgress into forbidden area of *confession* and would not be *admissible* under Section 26; but if such *admissions* are short of *confession*, such *admissions* would be admissible against the maker. One may, in this regard, refer to the case of **Faddi v. Madhya Pradesh (AIR 1964 SC 57)**, the appellant lodged a first information report and, based on this information, the dead body of his step son was recovered and three persons were arrested. As a result of the investigation, however, the appellant was arrested, was



sent up for trial, which resulted in his conviction and a sentence of death. In his appeal to the Supreme Court, it was contended that the first information report ought not to have been admitted, because of Section 25 of the Evidence Act and Section 162 of the Criminal Procedure Code. This contention was turned down on the ground that neither of the two provisions barred admissibility of the first information report as that report was only an *admission* by the appellant of certain facts, which had a bearing on the question as to how and by whom the murder was committed and whether the statement of the appellant, in the Court, denying the evidence of certain prosecution witnesses was correct or not. Such *admissions*, held the Supreme Court, in **Faddi** (supra), were admissible under Section 21 of the Evidence Act and, as such, could be proved against the accused.

57. From the decision, in **Faddi** (supra), what becomes transparent, as already indicated above, is that when a statement, made by an accused, not being a direct acknowledgement of guilt, or not being admission of the facts, which constitute the offence charged with, can, nevertheless, be admissible in evidence, as *admission*, by virtue of Section 21 of the Evidence Act and can be proved against the accused.

58. Clarifying the position of law with regard to the question as to whether a *confession*, which falls short of an actual *admission* of guilt, may be used as evidence against

the maker, under Section 21, the Supreme Court, in **Central Bureau of Investigation Vs. V.C. Shukla (AIR 1998 SC 1406)**, observed and held as under:

"45. *It is thus seen that only voluntary and direct acknowledgement of guilt is a confession **but when a confession falls short of actual admission of guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an 'admission' under Section 21.** The law in this regard has been clearly and — in our considered view — correctly explained in Monir's Law of Evidence (New Edition at pages 205 and 206), on which Mr. Jethmalani relied to bring home his contention that even if the entries are treated as 'admission' of Jains still they cannot be used against Shri Advani. The relevant passage reads as under: - "the distinction between admissions and confessions is of considerable importance for two reasons. **Firstly, a statement made by an accused person, if it is an admission, is admissible in evidence under Section 21 of the Evidence Act, unless the statement amounts to a confession and was made to a person in authority in consequence of some improper inducement, threat or promise, or was made to Police Officer, or was made at a time when the accused was in the custody of Police Officer. If a statement was made by the accused in the circumstances just mentioned, its admissibility will depend upon the determination of the question whether it does not amount to a confession. If it amounts***

*to a confession, it will be inadmissible, but if it does not amount to a confession, it will be admissible under Section 21 of the Act as an admission, provided that it suggest an inference as to a fact which is in issue in, or relevant to, the case and was not made to a Police Officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure. Secondly, a statement made by an accused person is admissible against others who are being jointly tried with him only if the statement amounts to a confession. **Where the statement falls short of a confession, it is admissible only against its maker as an admission and not against those who are being jointly tried with him.** Therefore, from the point of view of Section 30 of the Evidence Act also the distinction between an admission and a confession is of fundamental importance."*

(Emphasis is supplied)

59. In **Kanda Padayachi Vs. State of Tamil Nadu (AIR 1972 SC 66)**, the question was admissibility of a statement, which had been made by the accused, while he was in the police custody, to a doctor regarding some minor injuries found on his person. The accused had stated to the doctor, while in the police custody, that it was the deceased, who, at about midnight, on July, 10, 1969, had caused injury by biting him. The Supreme Court, referring to the case of **Pakala Narayana Swami** (supra), held, in **Kanda Padayachi** (supra),

that the said statement amounted to only an *admission* of fact, howsoever incriminating, but since the said statement did not, by itself, establish the guilt of the maker of such *admission*, the statement would not amount to *confession* within the meaning of Sections 24 to 26 of the Evidence Act. The Supreme Court makes it clear, in **Kanda Padayachi** (supra), that the admissibility of an *admission*, which does not amount to *confession*, is not barred and cannot be questioned under Section 26 and that such *admission* is admissible in evidence and can be relied upon as an *admission* under Section 21.

WHETHER IT IS PERMISSIBLE TO RELY ON THAT PART OF A STATEMENT MADE BY AN ACCUSED UNDER SECTION 313 (1) (B) OF THE CODE OF CRIMINAL PROCEDURE, WHICH IS FOUND TO BE TRUE AND REJECT THAT PART OF SUCH A STATEMENT WHICH IS FOUND TO BE FALSE OR IMPROBABLE FOR THE PURPOSE OF ARRIVING AT THE GUILT OR OTHERWISE OF AN ACCUSED?

60. Nishi Kant Jha Vs. State of Bihar (AIR 1969 SC 422) is a Constitution Bench decision on the controversy as to whether a Court can admit a part of a statement, made by an accused, as *admission* and reject the other part, for, the argument, advanced in **Nishi Kant Jha** (supra), was whether the statement, allegedly made by the accused and recorded by the village Mukhiya (village headman), before the accused was handed over to the police, was admissible in evidence; and, if so, whether the Court could reject a part of such statement as unbelievable and rely, on the

remainder part, along with the other evidence on record, to hold the accused guilty of the offence charged with. The question, posed in **Nishi Kant Jha** (supra), therefore, as indicated by the Constitution Bench, were: *"Whether the statement of the appellant recorded by a village Mukhiya before he was handed over to the police is admissible in evidence; and if so, whether the court could reject a part thereof and rely on the remainder along with other evidence adduced to hold him guilty of an offence he is charged with?"*

61. In **Nishi Kant Jha** (supra), the evidence against the appellant was, as in the present case, substantially circumstantial in nature. This apart, in **Nishi Kant Jha** (supra), the case was such that if the statement made before the Mukhiya was held inadmissible in evidence, the appellant could not have been held guilty. In **Nishi Kant Jha** (supra), the High Court had culled out the following incriminating circumstances against the accused:

"10. On the evidence the High Court found that the train had left Jasidih at 3-23 p.m. its next halt being Madhupur where it reached at 3-52 p.m. The door of the first class compartment was found closed at Jasidih and could not be opened. In the view of the High Court the murder was committed in the lavatory of the first class compartment between Jasidih and Madhupur. On a close scrutiny of the evidence adduced, the High Court found the following incriminating circumstances against the

appellant:-

- (a) *Only about two hours after the murder i.e. between 5 to 6 p.m he was seen washing his blood stained clothes on the bank of the river Patro.*
- (b) *At the time of his apprehension by Ram Kishore Pandey and others he was holding blood-stained exercise books and other books some of the pages being blood-stained.*
- (c) *He also had with him at that time a knife the length of the blade and the handle of which was about 9".*
- (d) *According to the medical evidence the injuries of the victim could have been caused by that knife which was in the possession of the appellant. One of the horizontal incised injuries i.e. injury No.6, was 5"x2"x $\frac{3}{4}$ ".*
- (e) *The left hand of the respondent was noticed with a cut injury at the bank of the said river. The marks of other injuries on the body of the appellant were compatible with a scuffle with the victim in the compartment of the train.*
- (f) *The explanation of the appellant with regard to the possession of blood-stained clothes and articles and the injury on his body was not acceptable."*

62. Taking note of the circumstances appearing against the appellant, in **Nishi Kant Jha** (supra), the Supreme Court observed:

"11. In the light of the above incriminating circumstances culled from the



evidence, the acceptance of the statement of the appellant in Ex.6 that he had travelled together with an unknown person, later identified as the victim Jai Prakash Dubey in the same compartment would be conclusive to prove the guilt of the appellant if his further statement in Ex.6 about the part played by Lal Mohan Sharma be rejected. The appellant had admitted his presence on the scene of the murder, but it was his version that the crime was committed by someone else while he himself was a helpless spectator. When the assailant jumped off the train he followed suit being apprehensive of arrest on the charge of murdering the unknown person. He had done so near the river Patro. **Some portions of the statement were not found to be acceptable.** It is not possible to believe that if Lal Mohan Sharma wanted to commit the murder he would prevent the appellant from getting off the train at Jasidih so as to have a witness who knew his name and address and testify to his commission of the crime. Lal Mohan Sharma was not in the train at Jhajha and no details were given about any quarrel between him and the victim which might lead the former to make the attack on Jai Prakash. Apparently there is no motive for Lal Mohan Sharma's commission of the crime. Again it is not possible to believe that Lal Mohan Sharma should not have tried to do away with the appellant also . The version of the appellant receiving the injury on his left hand in the railway compartment was also unbelievable. So was his story of a scuffle with the herdsman and

cutting his hand as a result thereof. The cause of the herdsman abusing the appellant and his remonstrance followed by an attack on his person all appear to be imaginary. The only incised injury which the appellant had suffered was skin deep and it is impossible to accept the story that the bleeding was so profuse as to have necessitated his washing his shirt and trousers in the river. Nor does such an injury account for the other articles like his belt, shoes and books being stained with blood which was sought to be removed by washing."

(Emphasis is added)

63. It was urged before the Supreme Court that if the statement made by appellant, **Nishi Kant Jha** (supra), is to be considered at all, it must be taken either as a whole or not at all; and that the Court could not have acted upon a portion of the statement, while rejecting the other portions. In **Nishi Kant Jha** (supra), if the statement, made by the appellant, was taken into account, as a whole, it would have revealed that he was not the person, who had killed Jai Prakash Dubey, and, hence, in such a situation, it was contended that it was not open to the Court not to believe that part of the statement made by the accused, which was to the effect that Jai Prakash was killed by an unknown assailant, and, at the same time, believe the statement of the accused that he was present in the railway compartment, when Jai Prakash was put to death. The contention of the appellant, as noted by the Supreme Court,

appears at para 15, which reads:

"15. In Roscoe's book on Criminal Evidence (16th Edition, page 52), the statement of law is much to the same effect. Roscoe also cites a decision in Rex v. Clewes, 4 Car &. 221 where the confession of the prisoner charged with murder that he was present at the murder but that it was committed by another person and that he took no part in it, was left to be considered by the jury with a direction that the jury might, if they thought proper, believe one part of it and disbelieve another. According to Archbold's Criminal Pleading, Evidence and Practice (Thirty-sixth Edition, page 423) :

"In all cases the whole of the confession should be given in evidence; for it is general rule that the whole of the account which a party gives of a transaction must be taken together; and his admission of a fact disadvantageous to himself shall not be received, without receiving at the same time his contemporaneous assertion of a fact favourable to him, not merely as evidence that he had made such assertion, but admissible evidence of the matter thus alleged by him in his discharge **It has been said that if there be no other evidence in the case, or none which is incompatible with the confession, it must be taken as true; but the better opinion seems to be that, as in the case of all other evidence, the whole should be left to the jury, to say whether the facts asserted by the prisoner in his favour be true.**"

(Emphasis is supplied)

64. Having analysed the facts of the case and also the various decisions relevant thereto, the Court concluded at para 23 as under:

"23. In this case the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on victim. This was contradicted by the statement of the accused himself under Section 342, Cr. P.C. to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13th October 1961 negatives both these versions. Neither of these version accounts for the profuse bleeding which led to his washing his clothes and having a bath in the river Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, P.W. 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report this knife could have been the cause of the injuries on the victim. **In circumstances like these, there being enough evidence to reject the exculpatory part of the statement of the**

appellant in Exhibit 6, the High Court had acted rightly in accepting the inculpatory part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime."

(Emphasis is added)

65. From what have been observed and held above by the Supreme Court, in **Nishi Kant Jha** (supra), it becomes clear that when a statement, made by an accused, has both *inculpatory* as well as *exculpatory* parts and when the Court, in such a case, finds the *exculpatory* part inherently improbable or when the *exculpatory* part is contradicted or belied by the other evidence on record, there is no impediment, in law, for the Court to reject the *exculpatory* part and rely upon the *inculpatory* part. This apart, what the decision, in **Nishi Kant Jha** (supra), further makes clear is that if such *inculpatory* part, combined with other pieces of evidence on record or statement of the accused made under Section 313 of the Code of Criminal Procedure, proves that the accused was the author of the crime, there is no impediment, in law, in convicting the accused in such a case.

66. In **Bhagwan Singh Rana vs. State of Haryana, (AIR 1976 SC 1797)**, it was contended before the Supreme Court that the courts below erred in accepting those parts of the statement of the appellant in Exhibits PB and PC, which were *inculpatory* and in rejecting those parts, which were

exculpatory, and that this approach was incorrect inasmuch as the requirement of the law, it was contended, is that such statements should either be accepted, as a whole, or not at all.

67. Referring to the decision, in **Nishi Kant Jha** (supra), the Supreme Court, in **Bhagwan Singh Rana** (supra), held, once again, that it is open to the Court to reject the *exculpatory* part and take the *inculpatory* part of a statement made by an accused, if there is other evidence to prove the *exculpatory* part incorrect. An examination of Exhibit PB and PC shows, points out the Supreme Court, in **Bhagwan Singh Rana** (supra), that the appellant admitted that he was working as Sub-Post Master, when PW5 came to the post office and delivered a parcel under postal certificate. In his presence, the parcel was opened by Tej Ram and that he (Tej Ram) took out a lady's wrist watch from the parcel and gives it to the appellant. This *admission*, made by the appellant, was treated as admissible in evidence.

68. In **Keshoram Bora Vs State of Assam, (AIR 1978 SC 1096)**, there was an *admission* by the accused that he did assault the deceased with a sharp-cutting weapon, which is called 'holonga', and as a result of such assault, the deceased fell down. The justification, offered by the accused, for assaulting the deceased was that he had assaulted the deceased in order to protect his ploughman from being

attacked with a dao. The Supreme Court found that the accused did not dispute the fact that he had fatally assaulted the deceased; but what the accused had pleaded was self-defence. The Supreme Court held that in such a case, the evidence adduced by the prosecution, shall be judged in the light of the *admission* made by the accused.

69. In **Keshoram Bora** (supra) too, it was submitted before the Court that it was not open to the Court to take the *inculpatory* part into consideration and reject the *exculpatory* part. It was, therefore, submitted, before the Supreme Court, that an *admission* can be taken either as a whole or not at all. The Supreme Court, referring to **Nishi Kant Jha** (supra), pointed out that the law stands well-settled that where a *confession* or *admission* is separable, there can be no objection to the taking of one part into consideration, which transpires to be true, and reject the other part, which transpires to be false.

70. While considering the scope and value of a statement made by an accused under Section 313 of the Code of Criminal Procedure, what needs to be pointed out is that under Section 313 (1) (a) of the Code of Criminal Procedure, a trial Judge is empowered to put any question to an accused at any stage of the trial; but at the end of the trial, it is, under Section 313 (1) (b), mandatory for the trial Judge to put to the



accused, facing trial, every such piece of evidence, which appears to be incriminating against the accused, and reply of the accused shall be sought thereto. In fact, Section 313 of the Code of Criminal Procedure aims at enabling an accused to personally explain circumstances appearing in the evidence against him. Examination of an accused, under Section 313 (1) (b) of the Code of Criminal Procedure, is, therefore, not an empty formality, but a solemn act of every trial Court.

71. As observed by the Supreme Court, in **State of Maharashtra Vs. Sukhdeo Singh (AIR 1992 SC 2100)**, Section 313 of the Code of Criminal Procedure is a statutory provision, which embodies the fundamental principle of a fair trial based on the maxim *audi alteram partem*, that attention of the accused must be specifically invited to inculpatory pieces of evidence or circumstances, laid on record, with a view to giving the accused an opportunity to offer his explanation if he chooses to do so.

72. As a matter of fact, as indicated in **Sukhdeo Singh** (supra), Section 313 (1) (b) of the Code of Criminal Procedure not only casts a solemn duty on the trial Court to elicit the response of the accused to every piece of incriminating circumstance, which may appear against him, but also confers a corresponding right on the accused to receive an opportunity so that he can offer his explanation, if he has any,



with regard to such incriminating materials or circumstances as may be appearing against him from the evidence on record. Examination of the accused under Section 313 (1) (b) of the Code of Criminal Procedure is reached after the witnesses of the prosecution have been examined and before the accused is called on to enter upon his defence. At the stage of closure of prosecution's evidence and before recording statement of the accused under Section 313 (1) (b) of the Code of Criminal Procedure, the trial Judge is not expected to evaluate the evidence for the purpose of deciding whether or not he should question the accused.

73. Before an accused is examined under Section 313 (1) (b) of the Code of Criminal Procedure, the trial Judge is not expected to sift the evidence and pronounce whether or not he would accept the evidence regarding any incriminating material against the accused to determine whether or not he would examine the accused on that material. To do so, points out the Supreme Court, in **Sukhdeo Singh** (supra), would amount to pre-judging the evidence without hearing the prosecution under Section 314 Cr. PC. No wonder, therefore, that the Supreme Court, in **Sukhdeo Singh** (supra), has observed that however weak or scanty the prosecution evidence may be with regard to an incriminating material, it is the duty of the Court to examine the accused and seek his explanation



thereto. It is only after that stage is over that the oral arguments have to be heard before the judgment is rendered and it is only where the Court finds that no incriminating material has surfaced that the accused may not be examined under Section 313. In short, if there is material against the accused, he must be examined, under Section 313 (1) (b) Cr. of the Code of Criminal Procedure, however weak or scanty the evidence against the accused may be. The relevant observations read as follows:

*"To do so would be to pre-judge the evidence without hearing the prosecution under Section 314 of the Code. **Therefore, no matter how weak or scanty the prosecution evidence is in regard to a certain incriminating material, it is the duty of the court to examine the accused and seek his explanation thereon.** It is only after that stage is over that the oral arguments have to be heard before the judgment is rendered. **It is only where the court finds that no incriminating material has surfaced that the accused may not be examined under Section 313 of the Code. If there is material against the accused he must be examined.** In the instant case it is not correct to say that no incriminating material had surfaced against the accused, particularly accused 5, and hence the learned trial Judge was not justified in examining the accused under Section 313 of the Code."*

(Emphasis is added)



74. What emerges from the above discussion is that when the prosecution's evidence is closed, it is imperative, on the part of the trial Judge, to examine the accused under Section 313 (1) (b) of the Code of Criminal Procedure. In such examination, the Judge has the duty to put to the accused all such circumstances, which appear from the evidence on record, incriminating against the accused and solicit the response of the accused thereto. This would give an opportunity to the accused to explain incriminating materials, which may have surfaced on the record against him. The answer, so given, by the accused may be taken into consideration along with the evidence on record.

75. In order to correctly appreciate the scope of Section 313 of the Code of Criminal Procedure, it is necessary to recall the facts of the case of **Sukhdev Singh alias Sukha** (supra). In **Sukhdev Singh alias Sukha** (supra), accused 1 (Sukhdev Singh @ Sukha) and accused 5 (Jinda), along with others, faced, amongst others, a charge, under Section 302 IPC, on the ground that they had killed General Vaidya, retired Chief of Army Staff, and his wife. When the charges were framed at the trial, both these accused, along with others, pleaded not guilty and claimed to be tried; but barely two weeks thereafter, the accused 1, orally, informed the learned trial Judge that he had killed General Vaidya and he did



not desire to contest the case. At a latter stage, when accused 1 was examined under Section 313 Cr.P.C., he made a statement to the effect that according to him, killing of General Vaidya was not a crime, because General Vaidya was responsible for conducting operation Blue Star, which had damaged a sacred religious place like the Akal Takht of the Golden Temple and, that is why, he had not pleaded guilty. The learned trial Judge gave time to accused 1 to reflect on the admissions, which he had made, and, on the date fixed, accused 1 presented a written statement, wherein also he had admitted to have fired four shots to General Vaidya and killed him. Even when his statement, under Section 313 of the Code of Criminal Procedure, was, later on, recorded, accused 1 owned the statement, which he had so made in writing (Ext.60A).

76. So far as accused 5, in **Sukhdev Singh's** case (supra), was concerned, he, having not pleaded guilty to the charge, continued to contest the case until he was examined under Section 313 of the Code of Criminal Procedure, wherein he made statements, in writing, admitting to have driven the motor cycle with accused 1 as a pillion rider and also admitting that the accused 1 had fired fatal shots on General Vaidya, while still sitting in the pillion seat. Accused 5 supplemented this statement by yet another statement, which he submitted, in writing, and proved as Ext. 922.



77. Thus, in **Sukhdev Singh's** case (supra), the two accused, in their oral as well as written statements, had made it clear that they believed that General Vaidya was responsible for conducting operation Blue Star, which had damaged Akal Takht, and it also injured the religious belief and sentiments of the Sikh community, and General Vaidya was, therefore, guilty of serious crime and they had merely executed him and, in doing so, they had not committed any crime whatsoever. These facts are clearly noted at Paragraph 46, 47 and 48 of the decision in **Sukhdev Singh** (supra).

78. It was in the above fact situation that it was submitted before the Supreme Court, on behalf of the two accused, in **Sukhdev Singh** (supra), that when there is no evidence or circumstance, appearing in the prosecution evidence implicating an accused with the commission of a crime with which he is charged, there is really nothing for the accused to explain and, hence, his examination would be wholly unnecessary and improper. In fact, it was submitted, in **Sukhdev Singh** (supra), that in such a situation, the accused cannot be questioned at all and his answers cannot be used in the evidence, which may have been adduced, and, hence, the statements, made by accused 1 and accused 5, during their examinations under Section 313 of the Code of Criminal Procedure, should be totally discarded. It was further suggested



to the Court that the evidence adduced by the prosecution was so weak that even if such evidence was taken to have been proved, the Court would not be in a position to convict the two accused and, hence, in such circumstances, it was unnecessary to examine the accused under Section 313 Cr.P.C., for, the answers cannot be used for the purpose of filling up the gaps in the evidence, which the prosecution has adduced against them. This apart, the statements, made by the said two accused in **Sukhdev Singh's** case (supra), being admission of guilt, the question was as to whether the Court could have acted upon the said admission of guilt.

79. Reacting to the above submissions made in **Sukhdev Singh alias Sukha** (supra), the Supreme Court pointed out, already indicated above, that at the stage of examination under Section 313 of the Code of Criminal Procedure, the Court does not sit on the judgment and so long as there is any incriminating evidence appearing against an accused, however weak such evidence may be, the court is duty bound to question the accused.

80. Before proceeding any further what is important to bear in mind is that though a statement, recorded under section 313 Cr. P. C., is not a statement made on oath and is not, strictly speaking, evidence, yet the statement, so made, can, indeed, be taken into consideration, at the trial,

against the accused for the purpose of arriving at the guilt or otherwise of the accused. In no uncertain words made the Supreme Court clear this position of law, when it observed and held, in **Sukhdev Singh** (supra), as follows:

*"51. That brings us to the question **whether such a statement recorded under Section 313 of the code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence stricto sensu.** That is why sub-section (3) says that the accused shall not render himself liable to punishment if he give false answer. Then comes sub-section (4), which reads : "313 (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. "*

Thus, the answers given by the accused, in response to his examination, under Section 313, can be taken into consideration in such inquiry or trial.** This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See State of Maharashtra v. R. B. Chowdhari (1967) 3 SCR 708 : AIR 1968 SC 110 : 1968 Cri LJ 95). This Court, in the case of Hate Singh Bhagat Singh v. State of M. B. (1953 Cri LJ 1933 : AIR 1953 SC 468) held that **an answer given by an

accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In *Narain Singh v. State of Punjab* (1963) 3 SCR 678 : (1964) 1 Cril 730), this Court held that **if the accused confesses to the commission of the offence with which he is charged, the Court may, relying upon that confession, proceed to convict him.** To state the exact language in which the three Judge bench answered the question, it would be advantageous to reproduce the relevant observations at page 684-685 :

"Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may, at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence, shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing, in the evidence, against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation, if any, of the incident, which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may 'be taken into consideration' at the enquiry or the trial. **If the accused person in his examination under section 342 confesses to the commission of the offence charged against him, the court may, relying upon that confession, proceed to convict him; but if he**

does not confess and, explaining circumstance, appearing in the evidence against him, sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety."

*Sub-Section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code except that it, now, stands bifurcated in two parts with the proviso added thereto clarifying that in summons case, where the presence of the accused is dispensed with, his examination under clause (b) may also be dispensed with. **Sub Section (2) of Section 313 reproduces the old subsection (4) and the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforesaid observations apply with equal force.***

[Emphasis is supplied]

81. From what have been observed and laid down in **Sukhdev Singh** (supra), it becomes transparent that if an accused person, in his examination under Section 313 of the Code of Criminal Procedure, confesses to the commission of the offence (s) charged with, the Court may, relying upon such confession, proceed to convict the accused and it is only when



the accused does not confess and/or the accused chooses to explain the circumstances appearing in the evidence against him or sets up his own version of the occurrence claiming to the effect that he had committed no offence, the statement of the accused, made during the course of examination, under Section 313 of the Code of Criminal Procedure, can be considered in its entirety along with other pieces of evidence on record. To put it a little differently, there is no impediment in law for a Court to found conviction of an accused on his confession made by him during his examination under Section 313 of the Code of Criminal Procedure and/or to rely upon an admission of facts made by an accused during his examination under Section 313 of the Code of Criminal Procedure.

82. It further logically follows from what have been observed and laid down, in **Sukhdev Singh** (supra), that an admission of a piece of evidence, which an accused may voluntarily make, at the stage of his examination under Section 313 of the Code of Criminal Procedure, can be relied upon and there is no impediment, in law, in convicting an accused on such admission made in the statement under Section 313 of the Code of Criminal Procedure if such statement, taken in its entirety, in the light of the other evidence on record, proves beyond doubt that the accused is the one, who has committed the offence.

83. The legal position, as discussed above,

with regard to the object and scope of Section 313 CrPC, is further reinforced by a three Judge Bench decision in **State of U.P. vs. Lakhmi**, reported in (1998) 4 SCC 336. In order to appreciate the law, on the use of the statement of an accused made under Section 313 CrPC, it is necessary to take note of the material facts of the case in **Lakhmi** (supra), wherein accused Lakhmi faced the charge of murder for having put his wife to death intentionally. Prosecution's case was largely based on the testimony of PW2 (Ramey). On the day of the occurrence, according to prosecution, Lakhmi inflicted blows with a *phalli* (a spade-like agricultural implement) on the head of the deceased. Her skull got smashed and she died on the spot. Ramey, who claims to have been working in the adjacent field, claimed that on hearing the screams of the deceased, he had rushed to the house of the accused and, on peeping through the windows, witnessed the accused smashing his wife's head by giving her blows with a *phalli* and, on hue and cry being raised by him (PW2), some neighbours, who heard the noise, came to the place of occurrence, broke open the door, which was bolted from inside, and overpowered the assailant. During the course of examination of the accused, under Section 313 CrPC, in **Lakhmi** (supra), one of the questions, put by the Court to the accused and the answer to the question read as follows:

"What have you to say about the evidence of Ramey (PW2) that he peeped through the

window and saw you standing near her bed and you killed her with phalli (Ex. Ka-1) and Kunda (Ex. Ka-2)?”

The answer of the accused to the said question was this: *"It was not like that. I murdered her with a kunda and not with a phalli."*

84. The learned Sessions Judge, in **Lakhmi** (supra), convicted the accused and sentenced him to imprisonment for life. The High Court, while acquitting the appellant, held the evidence of PW2 (Ramey) was not credit worthy and at any rate, his evidence had received no corroboration from any other reliable evidence. While so acquitting the accused, the High Court did not attribute any importance to the answers, given by the appellant, which we have reproduced hereinabove, wherein, he had practically, admitted, that he had killed his wife.

85. In the circumstances, as mentioned above, the Supreme Court, in **Lakhmi** (supra), has pointed out that answers to questions put to the accused may be, on most of the occasions, flat denial or outright repudiation of those circumstances, but, in certain cases, the accused would offer some explanations to the incriminating circumstances and in very rare instances, the accused may even admit or own incriminating circumstances adduced against him, perhaps, for



the purpose of adopting legally recognized defences. In all such cases, points the Supreme Court in **Lakhmi** (supra), the court gets the advantage of knowing the version of the accused about those aspects and it helps the court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance, appearing in the evidence against him, there is no warrant for the proposition that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.

86. Having pointed out that Sub-Section (4) of Section 313 amounts to a legislative guideline for the courts to give due weight to the answers, which an accused may give to the question put to him, the Court has clarified, in **Lakhmi** (supra) that when answers, given by an accused, contain admissions of circumstances appearing against him and when such admissions are not delinked from the evidence, such admissions can be used for arriving at a finding that the accused had committed the offence.

87. In view of the fact that the evidence, which came on the record to the effect that the accused-appellant had been absconding since after his wife's dead body was found at his house, was not been put to the accused at the time, when he was examined under Section 313 (1)(b) of the Code of Criminal Procedure, we keep the evidence of abscondence of

the accused-appellant excluded from the purview of our consideration.

88. What, however, remains on record, as already indicated above, is that Lalita Devi died, while she had been living with her husband in the circumstances, as have been pointed out above, and the accused was the one, who had, first, informed PW 2 about the death of Lalita Devi; but he remained silent, when PW 2 enquired from the accused-appellant as to how Lalita Devi had died. It was only at the stage of his examination under Section 313(1)(b) of the Code of Criminal Procedure that the accused-appellant came out with the explanation that he was made to drink medicine by someone else and that he was unconscious and did not, therefore, know as to who had killed Lalita Devi, though he admits that he was sleeping at a distance of 4-5 cubits from the place, where his wife, Lalita Devi, was lying dead.

89. In the light of the law that we have discussed above, when we revert to the facts of the present case, we find that Lalita Devi died, at the house of the accused, when the accused-appellant claims to have also fallen asleep. This statement of the accused-appellant shows that the accused-appellant was, admittedly, present at the house, at the time, when Lalita Devi died. The statement of the accused-appellant that he had been unknowingly and unconsciously



made to drink some medicine by someone, while he was sleeping and he does not know as to by whom is not only wholly improbable, but completely belied by the evidence on record inasmuch as there is not even a particle of evidence showing that the accused had been drugged by anyone. It was also not possible to make the accused-appellant drink any drug, while he was sleeping inasmuch as the statement of the accused-appellant is that some body had made him drink some drug, which made him fall unconscious. It is not the case of the accused-appellant that some drug was injected to him, while he was asleep.

90. In the circumstances indicated above, it was for the accused-appellant, and the accused-appellant alone, to explain as to how his wife had died, because it was the accused-appellant, who had the special knowledge as to how his wife had died, when she was, admittedly, sleeping at the house of the accused at the time, when the accused, too, was at home inasmuch as it is the *admission* of the accused that he was also lying at a distance of about 4-5 cubits from the place, where Lalita Devi was lying dead.

91. Because of what have been discussed above, we find that the evidence, adduced by the prosecution, proved the charge brought against the accused-appellant beyond all reasonable doubt. We are, therefore, clearly of the

view that the present appeal is without any merit and the impugned conviction of the accused-appellant as well as the sentenced passed against him do not call for any interference in this appeal.

92. In the result, this appeal is dismissed.

93. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J)

A.F.R./Pawan

(Vikash Jain, J)

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