

\$~R-20 (Part-B)

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

% **Reserved on: 15th October, 2015**
Date of Decision: 20th November, 2015

+ **CRL.A. 173/2000**

ANUP JOSHI Appellant
Through: Mr. Harsh Prabhakar, Adv.
DHCLSC and Mr. Anirudh
Tanwar, Adv.

versus

STATE Respondent

Through: Mr. Varun Goswami, APP with
ASI Shyam Sunder-PS
Mukherjee Nagar, Delhi

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. On 28.06.1996, Anju Mehta, wife of the appellant, aged about 23 years suffered homicidal death some time before 8.45 AM in a tenanted room in occupation and use as residence of the couple in House no.159, Village Dhaka within the jurisdiction of Police Station Mukherjee Nagar ("the police station"). Around the same time and at the same place, the appellant also suffered, amongst others, three clean incised wounds near umbilicus over the abdominal region causing the omentum (fold of peritoneum connecting stomach with other viscera) to come out. The first information report (FIR) (Ex.PW-10/A), registered at 12.05 PM by head constable Kamini (PW-10) on 28.06.1996, on the basis of *rukka* (Ex.PW-11/A) sent by head

constable Satyabir Singh (PW-11), founded on the statement of Devender Kumar (PW-9), a neighbour, resulted in investigation and report under Section 173 of Code of Criminal Procedure, 1973 (Cr.P.C) dated 23.09.1996 being submitted. It led to the appellant being put on trial in sessions case no.74/1997 on the charge for the offence of murder of Anju Mehta under Section 302 of Indian Penal Code, 1860 (IPC) and for attempted suicide under Section 309 IPC.

2. By judgment dated 29.11.1999, the appellant was held guilty, as charged, on the basis of circumstantial evidence primarily relying on the fact that the tenanted room where the incident had occurred had been found bolted from inside with no one other than the appellant and his wife (the deceased) present there. By order on sentence passed on 30.11.1999, the trial court awarded imprisonment for life with fine of Rs.50,000/- for the offence under Section 302 IPC and rigorous imprisonment for one year with fine of Rs.1,000/- for the offence under Section 309 IPC. It was directed that in case of default in payment of fine, the convict shall undergo further simple imprisonment of five years and one month respectively. The benefit of Section 428 Cr.P.C. was accorded.

3. Aggrieved with the judgment and the order on sentence, the appeal at hand was preferred. The sentence was suspended and the appellant released on bail pending adjudication on the appeal by order dated 23.01.2003.

4. We have heard arguments. During the course of hearing, we have been taken through the trial court record by the learned counsel on both sides.

5. Reliance has been placed on *Chittaranjan Das V. State of West Bengal* AIR 1963 SC 1696 to contend that the trial was vitiated as the charge framed were erroneous. The learned counsel for the appellant pointed out that in the first head of the charge the place of occurrence is indicated to be “in front of house No.159”. He pointed out that the incident is shown by the evidence to have actually taken place within the confines of one room of the said house. Further, in the second head of the charge for offence under Section 309 IPC, the appellant was accused of having attempted to commit “society”, which is meaningless. This, per the submission, caused grave prejudice to the appellant. It is further pointed out that the trial court committed another error at the stage of examination of the appellant under Section 313 Cr.P.C. by mentioning the place of occurrence (in question No.1) as “a room at the first floor of house No.159”, which was not correct. Reliance is placed on *Asraf Ali V. State of Assam* (2008) 10 SCR 1115 to argue that the failure of the trial court to correctly put the incriminating circumstances amounts to serious irregularity, which being prejudicial should also result in the trial being held as vitiated.

6. Whilst we agree that it is the responsibility of the criminal courts to ensure a fair trial, *inter alia*, by taking care that charges are framed with precision, adhering to the requirements of law prescribed particularly through the provisions contained in Chapter XVII of Cr.P.C., we do not accept the broad proposition that any “error” in the charge would render the trial that follows vitiated. In this context we need to refer only to two provisions viz., Sections 215 and 464 Cr.P.C. which read as under :-

“215.

Effect of errors. - No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.”

“464. Effect of omission to frame, or absence of, or error in, charge.- (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”

7. As is clear from the bare reading of Section 215 Cr.P.C. quoted above, the omission to state the offence or its particulars in the charge is not an error of the kind that would go to the root unless it can be shown that such error or omission had misled the accused or had

occasioned a failure of justice. On almost similar lines, Section 464 Cr.P.C. prescribes the test of “failure of justice” for examining if the error or omission in the charge is such as may result in the finding, sentence or order of the criminal court to be rendered invalid. The need for interference by the appellate court would arise in terms of sub-section 2 of Section 464 only in the event of it finding the answer of such scrutiny to be in the affirmative.

8. In the present case, the errors in the two charges under Section 309 IPC, though undesirable, were not such as would have misled the appellant. Mercifully, in the second charge the particulars of the offence included the allegation that he was being put to trial for offence under Section 309 IPC for the reason he had stabbed himself in the stomach. The evidence led thereupon, *inter alia*, refers to the injuries suffered by him as also the MLC recorded pursuant to his medical examination in the hospital. In fact, during his statement under Section 313 Cr.P.C. the appellant himself referred to the stab injuries suffered by him though claiming that he had been assaulted in his sleep by some unknown person. The ocular evidence supported by the site plans (Ex.PW-19/B and Ex.PW-13/A) clearly show that the offences were committed neither in front of the house nor at the first floor level but within the tenanted room at the ground floor of the property. The appellant had clearly understood this and it was his own case that his wife was murdered and he was stabbed in the tenanted room at the ground floor. This is vivid further from his answer to the first question in his statement under Section 313 Cr.P.C. Thus, the errors in the charges, or in the question under Section 313 Cr.P.C. are inconsequential.

9. It was submitted at the outset on behalf of the appellant that he does not dispute that his wife Anju Mehta had suffered a homicidal death, it being a case amounting to murder. The appellant also does not dispute that he had also suffered dangerous injuries on the same date, time and place. He, however, contests the allegations that it was he who had committed the murder or that after the said offence he had inflicted the dangerous injuries on his own person in an attempt to commit suicide. His defence is that the fatal assault on the person of Anju Mehta and the dangerous injuries inflicted on him were committed by some intruder.

10. Notwithstanding the fact that the appellant concedes the correctness of the prosecution case to above extent, this Court being the first appellate court, and virtually the final forum on facts, in order to satisfy ourselves as to the truth of the averments in the prosecution case in above regard, we have gone through the evidence adduced during trial. We conclude that the prosecution has successfully proved the death of Anju Mehta to be a case of murder as also the fact that the appellant was also seriously injured by the same weapon of offence (scissors) as used against Anju Mehta at the same point of time. We may briefly note the evidence to such effect.

11. Anju Mehta (the deceased) was daughter of Pishori Lal (PW-18). Seema Mehta (PW-2) is her real sister. The evidence of both these witnesses proves that the deceased was married to the appellant in August, 1989. Initially, the couple lived together in village Joshiana, District Pauri Garhwal though, presumably on account of some quarrels, for some period the deceased also lived with her parents

in Modi Nagar (UP). A daughter named Guddan was born in due course. The child, per the evidence of PW-2, after the incident (which is subject matter of this case) was brought up by the parents of the deceased. During the stay in native village of Garhwal, an incident had occurred on 28.11.1993 which led to the trial of the appellant, at the instance of the deceased, on the charge for offences punishable under Sections 307, 506, 498 IPC in the court of sessions at Pauri Garhwal. We shall refer to the facts and result of the said case a little later. For the present, it only needs to be noted that the trial culminated in the judgment dated 09.03.1995 whereby the appellant was held guilty for offences under Sections 324 and 325 IPC. It emerges from the evidence of Seema Mehta (PW-2), Pishori Lal (PW-18) and Meena Chauhan (PW-8) and Devender Kumar (PW-9) that the couple had later entered into a compromise and started living together having taken on rent a room in the house which was the place of crime of the case at hand. Meena Chauhan (PW-8), the land-lady, confirmed that the premises in question had been let out by her to the appellant about 8/9 months prior to the incident. Devender Kumar (PW-9) was another tenant in another portion of the same property.

12. The house in question (one of the rooms of which was in the tenancy of the appellant where murder was committed and the appellant was injured) is shown in the site plan without scale (PW-19/B) prepared by Inspector Jagtar Singh (PW-19), the Station House Officer (SHO) of the police station, who had inspected the scene of crime. It is shown more clearly in the scaled site plan (Ex.PW-13/A) prepared in due course by Tirath Raj Singh (PW-13). As clarified by PW-9, besides him four or five other tenants, including the appellant,

were living in the said property, each having in their respective possession one room. The room in the possession of the appellant was not very large in dimensions (9 feet 9 inches long and 9 feet 6 inches wide), self contained, enclosed from all sides, with only one door for entry into or exit from and with a window being located close to the door, with protection in the form of horizontally placed grill work.

13. During the course of investigation, Inspector Jagtar Singh (PW-19) had arranged for an inspection by the crime team that included a photographer Constable Balwan Singh (PW-5). PW-5 has proved the negatives (Ex.PW-5/1 to 9) with the help of which he had prepared photographs (Ex.PW-5/10 to 18). One of these photographs shows the solitary door and the window from outside. It may be noted that an air cooler was placed on a stand against the window though leaving some space making it possible for one to look from outside. The door noticeably is made of iron sheet.

14. Meena Chauhan (PW-8), the land-lady, and Devender Kumar (PW-9), the neighbouring tenant, have testified - and there is no contest from the side of appellant - that on the date in question (28.06.1996) at about 8.30/8.45 AM it had come to be noticed that blood was flowing out from beneath the door of the room in occupation and use of the appellant (and the deceased). PW-8 was informed about this by someone from the neighbourhood. PW-9, a TSR driver by profession, was busy cleaning his TSR when he was informed by his son Rupesh Kumar. Both of them ran to the door of the room of the appellant and saw for themselves blood coming out in large quantity from the gap between the door and the floor. Someone from the neighbourhood

informed the police control room (PCR) which passed on the information to the police station where it was logged vide DD no.4A (Mark X) at 9.15 AM. The matter was entrusted to head constable Satyabir Singh (PW-11) who, accompanied by constable Bharat Bhushan, reached the spot. He was joined in due course by the IO (PW19) assisted by SI Raj Singh (PW-12).

15. The evidence of PW-11, PW-12 and PW-19, as indeed of PW-8 and PW-9, refers to the sequence in which entry into the room in question was gained in due course. We reserve our scrutiny to this part of the evidence for later. For present purposes, suffice it to note that these witnesses have confirmed in unison that, inside the room, the dead body of Anju Mehta was found on the floor with bleeding injuries. The photographs (Ex.PW-5/10 to 18) confirm the ocular evidence also corroborate that blood was found all over including on the clothes lying on the bed, on the walls, door, furniture or other items placed in the premises. The IO took note of the scene in his endorsement (Ex.PW-11/A) forming part of the *rukka*. He prepared death report (PW-19/C3) along with other inquest papers including brief facts (PW-19/C1) and submitted the dead body for post-mortem examination with formal request (Ex.PW-19/C) along with another request (Ex.PW-19/C2), *inter alia*, for finger/palm prints, blood sample etc. to be preserved.

16. The post-mortem examination was conducted by Dr. K. Goyal (PW-3) on 29.06.1996 in the mortuary at Sabzi Mandi, Delhi. The autopsy doctor issued report (Ex.PW-3/A) which has been formally proved during the trial.

17. During the post-mortem examination, Dr. K. Goyal (PW-3) noted in the autopsy report (Ex.PW-3/A) fifty external injuries on the dead body including some superficial to muscle deep on different parts of the limbs and mainly the following :-

1. *Superficial incised wound I/W 4.4 cm x .7 cm over middle of forehead obliquely placed and spindle shape.*
2. *Muscle deep incised wound 4.2 cm x .8 cm vertical over frontal and forehead.*
3. *Vertical muscle deep incised wound 1.2 cm x .3 cm over left forehead.*
4. *Muscle deep incised wound 1 cm x .2 cm left side of nose.*
5. *Incised wound 1.8 cm x .2 cm muscle deep over left lower eyelid.*
6. *Incised wound 1.7 x .3 over left lower eyelid.*
7. *Superficial I/W .5 cm x .2 cm, about 2 cm below left eye.*
8. *I/W .5 x .2 over left upper eyelid.*
9. *I/W 2 cm x .5 cm at left angle of mouth.*
10. *I/W 1 cm x .3 cm at right angle of mouth.*
11. *I/W 3.8 x 1 spindle shape muscle deep over right mandibular region just below right ear. There were 3 incised wound over right clavicular region.*
12. *3 cm x 1 cm x ? over middle part wedge shape.*
13. *.5 x .2 cm superficial at medial end.*
14. *1.4 x .7 muscle deep slightly wedge shape at medial size placed vertically.*
15. *Wedge shape I/W 2.3 x .9 cm muscle deep vertically with tail end downwards over chest about 1 cm right to midline at the nipple lable.*
16. *Two superficial I/Ws 1 cm x .5 cm and 1.5 cm x .2 cm just above right nipple with two linear stretch around of sizes 1 cm and 1.5 cm.*
17. *I/W 1.5 cm x .5 cm wedge shape over left breast about 3 cm left to the nipple.*
18. *I/W 2.3 x 1.2 x ? over left chest at interior axillary line about 14 cm below left axilla, wedge shape placed rightly oblique.*

19. *Wedge shape I/W 2.8 cm x 1 cm x ? over right lower chest at mid clavicular line about 23 cm below the clavical placed transversally with tail and towards lateral side.*
20. *Wedge shape I/W 2.7 x .8 x ? over right interior axillary line about 19 cm below right axilla placed obliquely.*
21. *Superficial I/W 1 cm x 1/2 cm between injury number 19 and 20.*
22. *I/W 2 x .9 x ? over right lumber region wedge shape.*
23. *There were five incised wounds wedge shape to spindle shape of varying sized 1.8 cm x .3 cm to 2.5 cm x 1 cm over epigastric region in different direction.*
24. *2 incised wounds placed perpendicular to each other over lower side of epigastric region of sizes 4.5 cm x 1.5 cm and perpendicular wound is about 3.5 cm x 1 cm wedge shape.*
25. *Transversally placed wedge shape I/W 2.2 x .4 x ? just above the umbilicus.*
26. *Transversally placed wedge shape I/W 2 cm x .3 cm placed just right to the umbilicus with tail end laterally.*
27. *Obliquely placed wedge shape I/W 2.3 x .8 over left hypochondrium.*
28. *Vertically placed wedge shape I/W 2.5 cm x .7 cm over left lumber region with tail end downwards.*
29. *Transversally placed wedge shape I/W 2.1 x .8 at lower side of left chest at left anterior axillary line about 27 cm below axilla.*
30. *Wedge shape incised wound 2.2 x .8 placed obliquely about 22 cm below left axilla at posterior axillary line with tail end upwards.*
31. *Wedge shape I/W 2 cm x .08 cm placed transversally at right posterior axillary line about 28 cm below right axilla.*
32. *There were 3 wedge shape I/W in area 7 cm x 7 cm of sizes 3.8 x 1.2, 2.5 x 1 and 2.8 x .9 present over back of lower side of right chest."*

18. The internal examination of the dead body revealed as follows :

“Head - Injuries over forehead and frontal region were muscle deep to bone deep only. Bruising underneath scalp frontal region around wounds. All other structures were intact.

Neck - All structures were intact.

Chest and abdomen – Heaps intact

Injury no.19 and 20 present in right 7th ICS underlying tissues and muscles cleanly cut, corresponding cut present in right dome of diaphragm. Corresponding cut present in right lobe of liver. Cut corresponding with injury no.19 was about 2.5 cm deep in the liver and of injury no.20 was about 2 cm deep. Total depth of the wounds were about 7 to 8 cms underlying tissues and muscles under injury no.24. cleanly cut with peritoneum. Tears of sizes .75 inch to 1 inch present in small intestinal loops at corresponding size and total maximum depth about 10 cm. all other injuries over chest and abdomen were superficial to muscle deep only.

Stomach, bladder, rectum and uterus were empty.”

19. In the opinion of the autopsy doctor, all the above mentioned injuries, ante-mortem in nature, had been caused by a sharp edged weapon, possibly by a blade of a pair of scissors, injury nos. 19, 20 and 24 being individually sufficient, in ordinary course of nature, to cause death. The death, in the opinion of the autopsy doctor, had occurred due to haemorrhagic shock consequent to the injuries in the abdominal region.

20. The sheer number of the injuries and the violence that was inflicted on the body of Anju Mehta leaves no room for doubt that the

assailant had intended to bring about her death. Given these facts, and in absence of any other theory, we have no hesitation in accepting the conclusion of the trial court that Anju Mehta's death some time before 8.45 AM on 28.06.1996 in the aforementioned tenanted room was a case of murder.

21. It has come in the evidence of PW-8, PW-9, PW-11, PW-12 and PW-19 that when the door of the tenanted room was opened, the appellant was also found lying inside in injured state. He was taken to Hindu Rao Hospital by the IO, assisted by SI R P Singh (PW-6), and examined against medico legal report (MLC) by Dr. R N Sahai (PW-1). The examining medical officer (PW-1) has proved the MLC (Ex.PW-1/A) indicating that the appellant had been brought to the casualty of the said hospital at 10 AM and, upon examination, was found having suffered the following injuries :

- 1. Clean incised wound, 3 in number/over abdomen near umbilicus (centre point) with omentum coming out from one of the wound.*
- 2. Clean incised wound in right hand between thumb and index fingers*
- 3. Clean incised wound over left index finger*
- 4. Clean incised over right hand over fourth finger.*

22. Dr. Arun Kumar (PW-17) was later called upon to examine the matter and give opinion about the nature of injuries. The said witness has proved the opinion (Ex.PW-17/A) recorded by him on the MLC (Ex.PW-1/A). Given the first injury, noted above, we agree that the

wounds suffered by the appellant were life threatening and, thus, dangerous in nature.

23. In addition to Seema Mehta (PW-2) and Pishori Lal (PW-18), sister and father respectively of the deceased, the prosecution also examined Vijay Bali (PW-7), the maternal uncle. It has come in the evidence of the first of the said witnesses that she had also been living with the couple in the tenanted room in village Dhaka during the relevant period. The father and maternal uncle, speaking on the basis of what they may have learnt from their respective interaction with the deceased, and the sister deposing on the strength of what she had herself seen, narrated as to how the appellant was in the habit of quarrelling with, or beating, his wife (the deceased) frequently. PW-2 and PW-7 were not very elaborate in speaking about the past events though PW-18 also confirmed their word about the incident of 28.11.1993 which had led to the trial of the appellant, *inter alia*, on the charge under Section 307 IPC in the sessions court at Pauri Garhwal.

24. Devender Kumar (PW-9), the immediate neighbour did state that he had never noticed the deceased or the appellant quarrelling with each other, we have no reasons not to believe the word of the immediate family members about the marital life of the couple not having been happy or peaceful. A copy of the judgment dated 09.03.1995 (Ex.PY) along with the FIR no.5/93 dated 28.11.1993 (Ex.PX) pertaining to the sessions case faced earlier by the appellant in the court of Sessions Judge, Pauri Garhwal lends more than necessary corroboration to the oral word of the aforementioned witnesses. It was proved at the said trial that the appellant had assaulted on the person of

the deceased with a *gandasa* and had caused injuries on her person. Noticeably, in the said very incident of 28.11.1993, Seema (PW-2) was also attacked and injured by the appellant. He was thus held guilty for offences under Sections 324 and 325 IPC and was released on probation for a period of one year, taking note of the fact that he had remained in jail for a period of about eleven months (during the investigation and trial).

25. It is the argument of the defence that the evidence about the result of the criminal case faced by the appellant in the Court of sessions at Pauri Garhwal cannot be taken note of because it is in the nature of evidence showing “previous bad character” which is irrelevant in criminal proceedings in view of the provision contained in Section 54 of the Evidence Act.

26. Relying on *Ram Lakhan Singh & Ors. V. State of Uttar Pradesh* (1977) 3 SCC 268, it is argued that the evidence of “bad character” is not relevant except in rebuttal where evidence of “good character” is submitted. The appellant also refers to *Empress V. Naba Kumar Patnaik & Ors.* (1897) SCC online Cal 7 and *Kamya V. State* AIR 1960 AP 490 to submit that the mandate of Section 54 of the Evidence Act renders it impermissible for the prosecution to lead evidence with regard to the “previous conviction” of the accused.

27. We have examined the above objection but find it unmerited primarily for the reasons that the above noted material is not presented by the prosecution to reflect on the “character” but to show the past conduct and motive which are relevant in view of Section 8 of the Evidence Act.

28. Section 54 of the Indian Evidence Act debars proving the previous conviction as evidencing bad character of the accused except in certain circumstances. The exceptions are two-fold : firstly, when evidence of good character has been led, and, secondly, when the factum of previous conviction itself is in issue. Here, in the present matter, neither of the two occasions has arisen. In fact, there is no effort whatsoever on the part of the prosecution to lead evidence as to previous conviction to consequently address the bad character issue. The object of reliance on the judgment dated 09.03.1995 in the case of Pauri Garhwal, as we shall presently see, is to prove the motive, past conduct and the intention, all factors relevant to prove the charge in the instant case.

29. Section 8, section 14, section 15 and section 43 of the Indian Evidence Act, to the extent germane to the issues involved, may be extracted. They read as under :

“8. Motive, preparation and previous or subsequent conduct.—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the

relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

X X X

14. Facts showing existence of state of mind, or of body or bodily feeling.—Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

[Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.]

Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.]

Illustrations

X X X

(o) A is tried for the murder of B by intentionally shooting him dead. The fact that A, on other occasions shot at B is relevant, as showing his intention to shoot B. The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

X X X

15. Facts bearing on question whether act was accidental or intentional.—When there is a question whether an act was accidental or intentional, 1[or done with a particular knowledge or intention,] the fact that

such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.”

X X X

“43. Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.—Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.

Illustrations

X X X

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.”

30. As is clear from the bare reading of the afore-quoted statutory provisions, Section 8 renders the evidence showing previous conduct or motive relevant and admissible. Similarly, Section 14 stipulates that the facts showing the state of mind are relevant so long as the existence of such state of mind itself is relevant. It is, however, the pre-requisite of the said clause that the existence of the state of mind must be shown in reference to the matter in question and not generally. Noticeably, Section 15 ordains that when the issue arises as to whether the act was intentional or otherwise, the fact that such act formed a pattern with other acts, on account of a series of similar occurrences in the past, renders the previous such occurrences relevant.

31. Insofar as the present case is concerned, the specific facts sought to be brought home pertain to the propensity of the appellant to be physically abusive and the previous rigors of implication, and

conviction, on similar criminal charge acting as a stimulant triggering, yet again, his violent streak. The mental disposition owing to the background of having been adjudged guilty for offence punishable under Sections 324 and 325 IPC constitute the motive for the offence, which is the subject matter under the present factual matrix. The evidence led about previous conviction seeks to throw light on, and prove, the previous commission of acts resulting in physical injuries inflicted by the appellant on the deceased and her sister, betraying the aggressive disposition towards them, and consequentially the motive, as relevant under Section 8 and the Illustration (o) below Section 8 noted above supports this view. Noticeably, the second explanation appended to Section 14 of the Evidence Act stipulates that where the previous commission of an offence by the accused is relevant, it being reflective of the existence of a relevant state of mind for purposes of the charge on which he is tried, the previous conviction may be proved as a fact relevant thereto.

32. We would not extend the earlier episode and conviction as an evidence that the appellant was likely to commit the offence or deepen the suspicion or give it a probative value except to the limited extent - as indicative of intention - for facts on record justify such inference. The motive and previous similar instances of conscious, voluntary or intentional acts can be relevant under Sections 8 and 15 of the Evidence Act when there is nexus and link between such facts and the fact in issue. The existence of the state of mind behind the intentional assault (relevant under Section 14) draws force from the motive for retribution relevant in the light of previous implication and guilt verdict (relevant under Section 8 and 15) and render referencing to the

previous commission and conviction imperative. We reject the objection to the evidence being led about the result of the earlier criminal case for the additional reason that judgment dated 09.03.1995 of the sessions court at Pauri Garhwal is relevant in terms of Sections 8, 14 and 15 of the Evidence Act for purposes of bringing home the motive and past conduct, reflective of the mental condition it being an antecedent specific and particular to the deceased. This view also finds support from Illustration (f) appended below Section 43 quoted earlier.

33. The oral evidence given by PW-2, PW-7 and PW-18 shows the marital relationship of the deceased and the appellant had been replete with instances of quarrels and assaults. The incident of 28.11.1993 was subject matter of an adjudicatory process concerning one of the said assaults. It resulted in findings being returned by a competent court of law holding the appellant guilty. The said findings are relevant to support the case for the prosecution that the conduct of the appellant was such that he would turn violent against the wife and given the ignominy suffered by him as a result of conviction on criminal charge in the past. The motive having its origin in the marital discord is established from the ocular and documentary evidence.

34. PW-2 has testified that there had been a quarrel between the appellant and the deceased in the morning of 28.06.1996 in the course of which the appellant had become abusive and violent. She, however, took it as a routine happening and went away on her duty having left the house at about 8 AM advising the appellant not to indulge in such behaviour. She was informed at about 10 AM in the office about the

violent incident and had rushed back home to learn the details of what had happened.

35. The appellant relies on *Shivsharanappa & Ors. V. State of Karnataka* (2013) 5 SCC 705, *Surjit Singh & Anr. V. State of Punjab* AIR 1994 SC 110 and *Lalla @ Raj Kumar Singh V. State of U.P.* 2004 (2) Crimes 101 to argue that the conduct of Seema Mehta (PW-2) was unnatural and so does not deserve to be believed. The appellant referred to the judgment of the learned sessions judge, Pauri Garhwal in the earlier case to point out that the testimony of this witness was found to be fraught with exaggerations. He refers to her testimony in the trial court mentioning the incident in the morning of 28.06.1996 wherein the deceased was beaten by the appellant in PW-2's presence. The argument raised is that given the past conduct, PW-2 could not have trivialised this incident and proceeded to her office simply after counselling the appellant.

36. We find the above submissions fallacious. What is to be subjected to scrutiny here is the deposition of the witnesses in the trial leading to the impugned judgment. If the learned sessions judge at Pauri Garhwal in the previous case had found some exaggerations in her testimony that would not affect the credibility of the witness (PW-2) in the present case. It may be added that despite the so-called exaggerations, the testimony of the witness was believed even in the previous case wherein the appellant was found guilty not only for having caused injuries on the person of the deceased but also on the person of PW-2. The mere fact that this witness is sister of the deceased does not mean her testimony becomes doubtful. On the

contrary, she being privy and a resident of the same room was in the best position to bring out the true facts.

37. During the course of investigation at the scene of crime, the IO (PW-19) had found, amongst others, two parts of scissors, broken from each other. One blade of the scissors (Ex.P1) bearing blood stains was found lying near the dead body and was seized vide Ex.PW-2/B, after its sketch (Ex.PW-9/B1) had been prepared, both attested by PW-2 and PW-9. The other part of the scissors, the blade (Ex.P2), its nut and bolt were found lying on a shelf during search of the place and were seized vide separate memo (Ex.PW-2/A), after its sketch (PW-9/C) had been prepared, this recovery being attested by the aforementioned two witnesses and PW-12. During the investigation, the IO had also collected sample of the blood stains lying on the floor and from around the dead body vide seizure memo (Ex.PW/D), broken pieces of glass (Collectively Ex.P3) near the lower limbs of the deceased, vide memo (Ex.PW-2/C), and a tape recorder with cassette (Ex.P4 and P5 respectively) besides blood stained clothes, towel, pillow, bed sheets, mattress, shoes etc. (Ex.P6 to P15) vide memos (Ex.PW-2/A to F).

38. One part of the scissors (Ex.P1), found lying near the dead body was sent to the autopsy doctor (PW-3) on 29.06.1996 with the request (Ex.PW-19/D) for opinion about its possible use to inflict the injuries noted in the post-mortem examination report. PW-3 gave subsequent opinion (Ex.PW-3/B), *inter alia*, drawing a sketch of the said part instrument recoding her views that the external injuries mentioned in the autopsy report could possibly have been inflicted with it having been used as a weapon. On 06.07.1996 the said very part of the

scissors (Ex.P1) was also sent to Dr. Arun Kumar (PW-17) with the request (Ex.PW-17/B) as to its possible use vis-a-vis the injuries suffered by the appellant, as noted in the MLC (Ex.PW-1/A). PW-17 recorded his opinion (Ex.PW-17/C) again confirming that the sharp injury noted in the MLC could possibly have been inflicted with the said pair scissors having been used as a weapon.

39. The witnesses of the scene Meena Chauhan (PW-8) and Devender Kumar (PW-9) have affirmed on oath that when their attention was drawn towards the room occupied by the appellant (and the deceased) in the morning of 28.06.1996, blood was coming out from beneath the door, which was bolted from inside. Both spoke about efforts being made by the local residents to get the door opened but with no immediate success. Upon information reaching the police station (vide DD no.4A), head constable Satyabir Singh (PW-11) was the first police official to reach the scene. He has testified confirming the word of PW-9 in particular that it was only after the arrival of the police that the door was opened by the appellant. As per the evidence of PW-11 when he had reached the place, the tape recorder was running on full volume inside the room. Thus, PW-8 and PW-9 may not be wrong in stating that they had not heard any cries that might have been raised for help by the deceased at the time of the assault.

40. It has been the defence of the appellant that some intruder had entered the room and had fatally stabbed his wife and also wounded him with the same weapon. As noted earlier, it was a small room with only one door for gaining entry into or exit from the place. The said door was bolted from inside. We are not persuaded to accept the

defence plea that the intruder may have put his hand through the window to latch the bolt back on the door from inside while leaving the place. There is no evidence showing any such possibility and is rather farcical. This theory was not suggested to any of the relevant witnesses. In our considered opinion, this plea raised at the stage of appeal is nothing but a wild imagination.

41. The possibility of an intruder having come in to commit the offence and then having gone out after bolting the door from inside by accessing the bolt through the window is, thus, non-existent. Thus, reliance on *Prem Thakur V. State of Punjab* (1982) 3 SCC 462, *Mulak Raj & Ors. V. State of Haryana* (1996) 7 SCC 308 and *Bhupender @ Kale V. State* 2012 Law Suit (Del) 1215 is misplaced.

42. In our judgment, the circumstances here speak for themselves. The chain is complete and unerringly points to the guilt of the appellant. Given the above scenario, there can be no doubt about the fact that the deceased was attacked with the broken blade of scissors by the appellant and no one else. He had the requisite motive, since he had to remain in jail for about eleven months in connection with the incident of 28.11.1993 on his conviction under Section 324 IPC. His marital life was violent and dissolute. Thus, we uphold the finding that the appellant had committed the murder of Anju Mehta.

43. It is the argument of the appellant that the investigation has not been fair or impartial. Reliance is placed on *Vinod Kumar Soin @ Kapil Kumar V. State* 2009 Law Suit (Del) 137 to argue that the question as to whether the injuries suffered by the appellant were self-inflicted (so to as be suicidal) has not been properly probed. Reference

is made to Modi's treatise on Medical Jurisprudence and Toxicology (24th Edition published by Lexis Nexis Butterworths Wadhwa, Nagpur) to point out that in case of suicidal or self-inflicted stab injuries "hesitation cuts" are usually found present. It was argued that since the opinion of the medical officer, who had examined the appellant in the hospital on this issue was not ascertained, it cannot be said with certainty that the injuries suffered by the appellant were self-inflicted. In the same context, reference is also made to the incised wounds found in two fingers of the right hand and one finger of the left which, in the submission of the appellant, renders his plea of they being defence wounds probable. The counsel argued that inefficient investigations ought not result in the presumption of innocence being sacrificed. [*Kailash Gour V. State of Assam* (2012) 2 SCC 34]

44. We are not impressed with the above noted submissions. As observed elsewhere in the judgment, the theory of an intruder having come in and attacked both husband and wife is unfounded. The only door in the single room tenement was bolted from inside. The husband and wife only were present inside and there was no possibility of any intruder barging in. The scissors, as the evidence clearly shows, had been broken into two parts. It was one of the said parts which was used in the vicious attack on the person of the deceased. The violence with which she was assaulted by one of the two blades of the scissors is vivid from the fact that she suffered as many as fifty wounds, a number of them cutting deep into her insides. The medical jurisprudence does not lay down as an exceptional rule that in every case of suicidal self-inflicted stabbing there would always or invariably be some hesitation cut marks. Therefore, omission on the part of the

investigating officer to elicit further opinion in such regard from the medical officer is of no adverse effect. The injuries on his own fingers rather reinforce the fact that he had wielded the scissors blade in his hands.

45. Given the factual matrix, where his wife was found lying dead due to extensive stab wounds inflicted in her abdominal region, it is quite apparent that the stab injuries suffered again in the abdominal region by the appellant were inflicted upon himself by him and no one else. Clearly, the intention behind inflicting such injury upon himself was to bring about his own death. Thus, the charge of attempt to commit suicide also stands established.

46. For the foregoing reasons, we are of the view that the learned trial court has reached the correct conclusions in the impugned judgment. There is no error or illegality in the view taken. The appeal is found devoid of substance and is dismissed.

47. The appellant is directed to surrender to custody within fifteen days of this judgment to serve the sentences awarded against him. We direct the learned Additional District and Sessions Judge presiding over the trial court (the Successor Court) and Station House Officer (SHO) of Police Station Mukherjee Nagar to take necessary steps to ensure compliance with above directions in accordance with law.

R. K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

NOVEMBER 20, 2015/VLD