

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

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Reserved on : December 22, 2014

Pronounced on : January 07, 2015

+ **CRL.A.713/2012**

RAJENDER THR. PAROKAR

..... Appellant

Represented by: Ms.Inderjeet Sidhu, Advocate

versus

STATE

..... Respondent

Represented by: Ms.Aashaa Tiwari and
Mr.Varun Goswami, APP for
the State with Inspector Rajbir
Malik, SHO PS Najafgarh

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE R.K.GAUBA

R.K.GAUBA, J.

1. The appellant faced trial in sessions case no. 83/2011, on conclusion of which he was found guilty and convicted for offences punishable under sections 302 and 498A of Indian Penal Code (IPC) vide judgment dated March 14, 2012 passed by Sh.Virender Bhat, Additional Sessions Judge, Dwarka. Vide order on sentence passed on March 17, 2012 the learned trial court awarded imprisonment for life with fine of Rs.10,000/- for offence under section 302 IPC and rigorous imprisonment for two years with fine of Rs.10,000/- for offence under section 498A IPC. It was further directed in the said order that in case of default in the payment of fine the convict would undergo simple imprisonment for a period of six months. Feeling aggrieved, the convicted appellant has come up in this appeal to this Court.

2. Before we deal with the contentions raised it is apposite to take note, albeit briefly, of the facts and circumstances leading to the case in which impugned judgment and order were passed.

3. During the relevant period, the appellant was working as a driver in private employment. Praveen Yadav (DW-4), Director of T.R.Logistics Pvt. Ltd. has deposed that the appellant was deployed as a driver on the Rhino vehicle of the company engaged in the business of tours and travels.

4. There is ample evidence on record, including that led by the defence, affirming that the appellant was married to Uma Devi as per Hindu rites and ceremonies on April 21, 2004. A male child named Prince took birth out of this wedlock in due course. The case concerns unnatural death of Uma Devi (hereinafter referred to as 'the deceased') on January 11, 2010, her dead body having been discovered lying on a folding cot in house No.85, D-Block, Baba Hardass, Delhi within the jurisdiction of Police Station Najafgarh (hereinafter referred to as "the Police Station").

5. It may be mentioned here itself that there is no direct evidence available as to the circumstances immediately anterior to the suffering of injuries resulting in the death of Uma Devi. The prosecution had relied upon the evidence of Ms.Saroj (PW-1) and one Kiran, W/o Ranjit, both residents of houses in the vicinity of the place of occurrence. While PW-1 turned hostile and refused to corroborate the prosecution story as to she (along with Kiran) having gone to the house in question upon hearing noise of a quarrel at about 11 AM on January 11, 2010 to find the appellant hitting the deceased woman with a *tawa* (hot plate), the other witness Kiran was given up, seemingly for the reason she would also not support the case for the prosecution.

6. The prosecuting agency, thus, relied mainly on the testimony of Krishna Devi (PW-4) and Nagender Singh (PW-5), mother and father respectively of the deceased woman, this in addition to the word of Virender Singh (PW-2) uncle of the deceased woman, coupled with circumstantial and other corroborative evidence gathered by the police during investigation. The evidence of PW-2 was discarded from consideration by the learned trial court with the observation that it was in the nature of hearsay. We agree with the said view for the reason his knowledge about the past conduct of the appellant towards his wife (the deceased) is based on what he had learnt from his brother (PW-5) or the wife (PW-4) of the latter.

7. It is clear from the evidence that the parental family of the deceased woman come from middle class background. While PW-5 (father) runs a grocery shop, PW-4 (mother) is gainfully working as a property dealer. The family lives in a house in Sector 24, Rohini, Delhi. The deceased woman was not much educated, she having studied upto 9th standard.

8. It appears from the record that the family of the appellant resides in village Hasanpur, Najafgarh, New Delhi, which going by the address would not be very distant from the locality where his wife died. It is claimed by the defence that even the appellant would live in the house in his said native village. At least that is what is the effect of facts narrated by Kadam Singh (DW-1) and Surinder (DW-2), neighbour and brother respectively of the appellant.

9. PW-4 and PW-5, in their respective statements, deposed that dowry consisting, *inter alia*, of 6/7 tolas of gold, refrigerator, colour T.V. and motorcycle had been given at the time of marriage. The appellant did not dispute the correctness of evidence to such effect and rather admitted this to

be a fact in the course of his statement under Section 313 of the Code of Criminal Procedure (Cr.P.C). It must, however, be also observed that it is not the case of prosecution witnesses that such dowry was given on demand.

10. PW-4 and PW-5 further claimed that a car, make Indica, had also been purchased and given to the appellant besides money given on several occasions, on demand by the appellant. While the evidence about Indica car being arranged and given as gift to the appellant on his demand can be ignored, it having been denied, for the reason no concrete evidence for such gift has been adduced, it must be observed that the testimony of PW-4 about cash gifts also does not deserve to be given much weight for the reason it does not find any support from the evidence of her husband and further because it came out more in the nature of improvement over the version initially projected through the statement made before the police.

11. It is clear from the evidence that the marriage had run into rough weather within a few months. The dispute is as to the reasons that led to differences. PW-4 spoke about her daughter having been harassed by the appellant and other members of the matrimonial family attributing this conduct to their illicit demands for further dowry or valuable gifts. It is, however, clear that no formal report to police was made except once when PW-4 had lodged a complaint with crime against women cell, Rohini on February 26, 2009 (Ex.PW-4/B). PW-5 has sought to explain that report to police was avoided in larger interest of saving the marriage.

12. It seems the Investigating Officer, Inspector S.P.Kukreti (PW-15) took the complaint (Ex.PW-4/B) by itself to be sufficient evidence about the deceased woman having been subjected to ill-treatment for dowry, taking it on board through seizure memo (Ex.PW4/A). Though some of the facts

narrated in the said complaint lodged on February 26, 2009 (Ex. PW4/B) by PW-4 seem to be on the same lines as is her narration about the manner in which her daughter was ill-treated by her husband in the matrimonial home, in absence of further investigation as to whether any action in the nature of inquiry was taken on the said complaint, such material does not take the prosecution any further on such count.

13. But the fact that there had been problems in the relationship between the couple is clear not only from a document produced by DW-2 (brother of the appellant) but also from the testimony of PW-4 (mother of the deceased). According to DW-2, doubts arose as to sound mental condition of the deceased the very next day after marriage. Noticeably, PW-4 (mother of the deceased) herself reported to police in her complaint (Ex.PW4/B) that her daughter (the deceased) had become mentally disturbed. She, however, has also stated that her daughter and the appellant had lived together in the matrimonial home for about 8-9 months after marriage but thereafter both of them shifted to live with her (i.e. the parental family of the deceased) on account of harassment suffered by the deceased. She also spoke of her daughter feeling tormented and on such account often losing her temper blaming her for she having been put in such a position on account of marriage in such a family.

14. We are not inclined to believe the version of DW-2 (brother of the appellant) to the effect that the appellant suffered from unsoundness of mind prior to her marriage, which is the line of questions thrown at her parents during their respective cross examination. But there is evidence on record, which cannot be ignored, showing that the deceased woman did require medical attention at one stage, in that she had to be taken to Institute of

Human Behavior and Allied Sciences (IHBAS), Dilshad Garden, Delhi. Deposing on the basis of record of treatment (Ex.DW-3/A) Dr. Paramjit Singh (DW-3), Senior Resident IHBAS testified that the deceased woman had been diagnosed to be suffering from schizophrenia during her treatment in IHBAS from January 5, 1006 till July, 2007.

15. DW-3 himself did not examine or treat the deceased woman at any point of time. His testimony is based on the record of treatment prepared by three other doctors namely Dr.Amrit Pal Singh, Dr.Anil and Dr.Rajesh, none of whom was called in the witness box. The record of treatment adduced in evidence through DW-3 cannot be treated as the final word as to the diagnosis. At the most, it shows that the deceased woman was suffering from some mental condition for which she required medical attention. It does appear that the doctors attending on her suspected it to be a case of schizophrenia. They did prescribe treatment. But then, DW-3 is also on record to state that the patient had stopped coming to IHBAS from July, 2007 onwards. It not being the case of the appellant that the deceased would not co-operate with the treatment, it can safely be inferred that she may not have required any such medical attention during the subsequent period.

16. While on the subject, it may also be noted here that DW-3, the senior resident from IHBAS, *inter alia*, stated that a patient with such condition may have suicidal tendencies and particularly that on cessation of the effect of medicines (the treatment having been discontinued) the person may cause harm to himself or to others. But it is pertinent to note that Dr. Parvinder Singh (PW-3), the junior specialist from forensic medicine department of Rao Tula Ram Hospital, Jaffarpur, Najafgarh, Delhi, who had conducted the

autopsy on the dead body of the deceased woman, during cross-examination would say that it is not possible for a mentally sick person to have committed self-strangulation as is being suggested in the case in hand.

17. The death of Uma Devi came to light upon some unknown person informing the Police Station telephonically at about 8.15 PM on January 11, 2010. The information recorded vide DD No.40A (Ex.PW-8/A) on such basis was short and cryptic to the effect that a woman was lying dead in the house in question. The matter was entrusted by the Police Station to SI Tribhuvan (PW-14) who accompanied by constable Satyaveer (PW-10) set out for the place in question. The FIR (Ex.PW-8/B) was registered on the basis of *rukka* (Ex.PW-14/A) sent by PW-14 to the Police Station at 10.35 PM on the same night from the house where the dead body had been found.

18. The facts noted in the FIR and the evidence of PW-10 and PW-14 collectively show that when the aforementioned police officials arrived at the place they had found the appellant sitting outside. Though certain self-incriminating utterances (at such stage) were attributed to the appellant even in the FIR, the evidence to such effect has been rejected by the trial court, and rightly so, with reference to Section 25 of the Evidence Act. It is trite law that a statement in the nature of a confession made to a police officer cannot be allowed to be proved as against the person accused of an offence. But, at the same time the law permits so much of such information as has been received from a person accused of any offence, even in the custody of a police officer, as relates distinctly to a fact which has been discovered in its wake to be proved (Section 27 of the Evidence Act).

19. The evidence led by the prosecution unmistakably shows that on arrival of PW-14 accompanied by PW-10, the appellant opened the bolt on

the door of the room in question whereupon the dead body was found lying on the folding cot inside. The evidence as to the state in which the dead body was discovered has not been disputed. The oral testimony of the police officials in question coupled with other material on record, including photographs (Ex.PX) collectively reveal that one end of the sari worn around the body of the deceased woman had been used as ligature and another end thereof tied to the head of the cot.

20. After the necessary police proceedings the dead body was subjected to postmortem examination conducted by PW-3, concluding in his report (Ex.PW3/A), *inter alia*, opining the cause of death to be asphyxia following ante-mortem strangulation. The autopsy was conducted from 12.15 PM onwards on 12.1.2010 with the autopsy doctor assessing the time of death to be 20-21 hrs prior thereto. This would mean the death would have occurred some time around 3-4 PM of January 11, 2010.

21. The learned trial court noted in paragraph 36 of the impugned judgment the following to be the circumstances which had been “established” by the prosecution in its evidence:-

- (i) *The accused was harassing and torturing the deceased. He also used to beat her regularly.*
- (ii) *The accused had brought the deceased alongwith him from her parental house about 5 to 7 days before her death.*
- (iii) *The accused was found outside the house No.D-85, where the deceased had been killed, soon after the incident by the police when it reached there.*
- (iv) *The accused admitted before the police officials that he has killed his wife and also led them to the inner room of the house where the dead body of his wife i.e. deceased Uma was lying.*

- (v) *The accused was arrested from the same house on the date of incident at 11.30 p.m.*
- (vi) *The death of the deceased was homicidal and not suicidal.”*

22. Though taking the above as the facts and circumstances proved, in the following paragraph itself, as already noted, the circumstance No.(iv) mentioned above was discarded by the trial judge from consideration with reference to Section 25 of the Evidence Act.

23. It was argued by the defence before the trial court that there is no evidence showing that the appellant was actually living with the deceased woman in the house where her dead body was found. The appellant took the plea that he had not been living with the deceased woman on account of her misbehavior and unsound mental state. He pleaded *alibi* taking the position that at the relevant time he was attending his duty as a driver with the travel company with which was engaged. In this context, he relied on the evidence of his brother DW-2 Surender and his employer DW-4 Praveen Yadav. In an attempt to dispute the evidence as to his presence at the scene when the Investigating Officer PW-14 accompanied by PW-10 had arrived pursuant to the initial information he suggested to them during cross-examination that he had been called to the place after the dead body had been discovered and thereafter falsely implicated. He also claimed in his defence that the deceased woman had suicidal tendencies, owing to her unsound mental state and had made such an attempt in the past by jumping from the roof. Needless to add suggestions to such effect given to PW-4 and PW-5 and the Investigating Officer were suitably denied. Also, there is no evidence in support of the suggestion given about earlier attempt of suicide or about unsound mental state around the day of her death.

24. That the death of Uma Devi was homicidal, and definitely not suicidal, has been brought home beyond the pale of all doubts. The post-mortem examination report (Ex.PW-3/A) reveals the following external injuries:

“(i) Ligature Mark- Pressure abrasion, measuring 31 cms. Present all around the neck with width of 5 cms all around the neck and situated 6 cms below the chin, 4 cms from right ear lobule and 4 cms from left ear lobule, grooved, continuous, entirely encircling the neck. Total circumference of the neck is 31 cms. Knot present over front of neck. Slightly right from midline size of the knot is (4X3.5 cms).

(2) Scratch abrasion of size 0.5X 0.5 cms. Situated over dorsum of middle phalanx of right side ring finger.

(3) Scratch abrasion of size, 2 X 1.5 cms, situated over outer aspect and back of upper part of right forearm.

(4) Multiple scratch abrasions present in an area of 4 X 1.5 cms over back of lower part of left forearm.

(5) Crescent shaped abrasion of size (0.2 X 0.2) cms situated over lower part of left ala of neck.

(6) Bruising of middle part of the lower lip present.”

25. The ligature material was *saree* found wrapped around the dead body with the knot size measured as 4X3.5 cms and width over neck midline of the size of 3 cms. As mentioned earlier another end of the *saree* had been found by PW-14 to be tied with the folding cot on which the dead body was lying at the time of discovery. This apparently cannot be the scene in case of suicide. There cannot be any doubting as to the fact that the person who

tied the ligature around the neck with one end secured against the head post of the folding cot intended the death to be the end-result, an act squarely covered by first clause of Section 300 IPC.

26. Though DW-3 did speak about the possibility of a patient with schizophrenic traits to attempt cause harm to himself or others and also carry suicidal tendency, the autopsy doctor (PW-3) was categorical in denial of this to be the possible scenario in the case at hand since strangulation of the nature observed here could not have been indulged in by the deceased woman herself even if it were assumed that she was mentally unwell. Except for bald suggestion to such effect there is nothing on record to throw up even a remote possibility that the deceased woman had suicidal traits or could have committed an attempt of such nature.

27. Indeed, the Investigating Officers (PW-14 and PW-15) made no serious attempt to collect evidence as to the connection of the appellant with the house/room wherein his wife was found having suffered homicidal death. Both of them seem to have relied on the word of PW-1 (Ms. Saroj) and the other neighbor Kiran in this regard. The public prosecutor examining PW-1 (Ms. Saroj) failed to elicit information on this score.

28. Through the evidence of his brother DW-2 Surender, the appellant tried to show that he was residing with his brother and other members of the family, but separate from his wife, in his native village. But then, the evidence of PW-4 Krishna Devi (mother of the deceased) and PW-5 Nagender Singh (father of the deceased) nails the lie. Both of them affirmed on oath that the appellants had taken Uma Devi (the deceased) back with him 6-7 days prior to the incident. This part of the testimony of both the crucial witnesses for the prosecution was never disputed or discredited. No

suggestions worth the name to the contrary were given during their cross-examination. The evidence of PW-4 and PW-5 on this score thus remains unimpeached and must be accepted. A vague denial of the incriminating evidence in the course of the statement under Section 313 Cr.P.C. cannot be of any help to the defence.

29. In the above context, the further plea of the appellant that he was not present in the house in question at the relevant point of time but rather was away on duty of DW-4 and further that he was later called to the place by the police so as to be falsely implicated may now be looked into.

30. DW-2 Surender, brother of the appellants seeks to support the plea of *alibi* by deposing that the appellant had left the house, as in routine, early in the morning at about 8-8:30 AM and that when he returned the police came and arrested him. The time of returning to the house in village Hasanpur is indicated in the deposition of DW-2 to be 9:00 or 9:00 AM. Apparently, the expression “AM” is on account of typographical error. It appears what DW-2 wanted to say was that the appellant was away from the house in village Hasanpur throughout the better part of the day and thus his claim is that he had returned to the said place late in the night by 9-9:30 PM and that he was picked up by the police from the said house only.

31. DW-2 Surender is not a very credible witness. His statement about the mental condition of Uma Devi seems to be based on what he had been told about this by his brother, the appellant. He seems to be concealing more than what he is prepared to reveal. He spoke about the parents of the deceased having taken her back and in spite of their persistence the appellant refusing to bring her again to the matrimonial home. He conceded that the parents of the deceased would reside in Rohini also admitting that Uma Devi

died in a house in Najafgarh. Yet, he was not prepared to elaborate the circumstances in which the death would occur in another house at Najafgarh.

32. In our considered opinion, the evidence of PW-10 and PW-14 as to the presence of the appellant outside the room where the dead body was found pursuant to the information received vide DD No. 40A (Ex.PW-8/A) sometime after 8:15 PM on January 11, 2010 cannot be disbelieved. They are police officials who had no plausible reason to falsely implicate the appellant in the crime involving homicidal death of his wife. As police officials engaged in the duties relating to the crime investigation, the word of these public servants deserves due credence, particularly when the evidence as to the plea of *alibi* is false and wholly worthless as we shall presently note.

33. DW-4 Praveen Yadav first deposed (on 13.02.2012) that he was in a position to produce documentary evidence (duty chart and route chart) which would corroborate his word about the appellant having remained on duty plying a vehicle of his company from 8:30 AM to 8:00 PM on January 11, 2010. When called the next day with said relevant record, he made an about turn and claimed that the documents in question had already been destroyed. It needs to be noted here that the arrest memo (Ex.PW-14/B) and personal search memo (Ex. PW-14/C) leave no room for doubt that the appellant was arrested at 11:15 PM on January 11, 2010 from the house where the dead body had been found. This material adds to the reasons why the plea of *alibi* must be rejected.

34. It appears that either it was not clear to PW-4 and PW-5 as to which place the appellant had taken his wife from their house 6-7 days prior to the incident or the prosecutor in charge of the case omitted to find information

on the subject from them. The fact that she was found dead in house No.85 D-Block, Baba Hari Das Nagar, Delhi, however, fills the vacuum. The fact that the appellant was found sitting outside the said house when the police arrived (pursuant to DD No.40A) leaves no room for doubt as to the fact that appellant was aware as to where his wife was living during the said period. In this scenario, it can be safely inferred that he had himself brought her there and had been living with her in the said house all along.

35. The prosecution had also accused the appellant of having committed the offence punishable under Section 498-A IPC. The gravamen of the said charge was to the effect that after marriage on April 21, 2004 he had subjected Uma Devi to harassment on account of insufficient dowry. It appears that for its case involving the charge of murder under Section 302 IPC based essentially on circumstantial evidence, the prosecution intended to bring in the element of motive through the accusations concerning the offence under Section 498-A IPC. The learned trial Court convicted the appellant on the additional charge under Section 498-A IPC but without any reason being set out in the impugned judgment to indicate as to how the said charge had been brought home only on the basis of statements that the appellant had harassed or tortured the deceased or that he would beat her regularly.

36. The provision contained in Section 498-A IPC reads as under:-

“498-A-Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine”

Explanation: For the purpose of this section, “cruelty” means-

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical of the woman; or*
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

37. In the case at hand, “cruelty” is alleged to be on account of the harassment of the nature described in explanation (b) of Section 498-A IPC. In our opinion, however, the evidence led by the prosecution on above score, mainly through the mouthpiece of PW-4 and PW-5, is rather sketchy. From the facts and circumstance proved, it appears that the differences had arisen more on account of the hot temperament or suspicious nature of the deceased, which is the history with which she was taken by the appellant for treatment at IHBAS in January 2006, rather than the illicit demands for dowry or valuable gifts of the husband.

38. Given the evidence on record, we find the following facts and circumstances to have been brought home beyond the pale of all doubts:-

- (i) The appellant was married to the deceased on April 21, 2004 and as a result of their cohabitation a male child named Prince took birth in due course.
- (ii) On account of some disputes, the husband and wife shifted from the matrimonial home so as to live with the parents of the deceased in their house 8-9 months after the marriage.

- (iii) The appellant took the deceased for medical treatment to IHBAS in January, 2006 where she remained under treatment suspected to be a case of schizophrenia till July, 2007. Undisputedly the deceased woman had been suffering from disturbed state of mind. She felt harassed at the hands of her husband.
- (iv) The deceased continued to live in her parental home and during this period the differences had persisted on account of which PW-4 was even constrained to lodge a report with CAW cell against the appellant on February 26, 2009.
- (v) The deceased was taken away by the appellant to house No. No.85, D-Block, Baba Hardass, Delhi, 6-7 days prior to her death on January 11, 2010, where they lived together till her death.
- (vi) On January 11, 2010 in the wake of information received from an unknown caller at about 8.15 PM the police discovered the dead body of Uma Devi who was found having suffered homicidal death some time around 3-4 PM in the afternoon of the said day in the aforementioned house.
- (vii) At the time of discovery of the dead body the appellant was present at the scene sitting in front of the room the door of which was bolted from outside. He was arrested at 11.30 PM on the same night immediately after the crime had been taken note of by the police.

39. It is well-settled law [1989 Supp (2) SCC 706 Padala Verra Reddy Vs. State of A.P., (1982) 2 SCC 351 Gambhir Vs. State of Maharashtra and (2012) SCC 588 Budhram v. State of Chhattisgarh], that in a case resting

only on circumstantial evidence, the prosecution story must pass the muster of the following tests:-

“ (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the Accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the Accused and such evidence should not only be consistent with the guilt of the Accused but should be inconsistent with his innocence.”

40. It is trite that in case of circumstantial evidence the sufficiency of the material adduced by the prosecution for purposes of recording conviction has to be judged on the basis of overall effect of the entire set of facts taken cumulatively. To put it slightly differently, it is not necessary that each fact or circumstance by itself must be decisive. The caution which, however, has to be observed is that the prosecution must offer the best evidence which the nature of the case admits. [(2010) 8 SCC 593 G.Parshwanath Vs. State of Karnataka (G parsav & Brijender) & (2012) 4 SCC 289 Brajendrasingh Vs. State of M.P.]

41. In resisting the accusation of murder of his wife, the appellant came up with false denial of incriminating circumstance. He took up plea of *alibi* which he has failed to substantiate.

42. In (1984) 2 SCC 116 Sharad Birdhichand Sarda Vs . State of Maharashtra the Supreme Court held that:-

“a false explanation or false plea taken by the accused can be used as an additional link in the chain of circumstantial evidence subject to satisfaction of three essential conditions, namely (i) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (ii) the said circumstance points to the guilt of the accused with reasonable definiteness, and (iii) the circumstance is in proximity to the time and situation.”

43. Undoubtedly, a false plea taken by the accused may not by itself be sufficient to reach the conclusion as to his guilt. In case the prosecution story suffers from glaring infirmities the void on such count cannot be filled by a false plea of *alibi*. [(2011) 15 SCC 78 Surendra v. State of Rajasthan]

44. At the same time one cannot lose sight of the fact that in a case of circumstantial evidence question of motive assumes significant importance. [1994 Supp (3) SCC 639 Budha Satya Venkata S. Rao v. State of A.P.]

45. As noted earlier in the case at hand the prosecution rested its case on the question of motive on the evidence concerning undue demands for dowry and consequent harassment or ill-treatment of the deceased woman in the matrimonial home for reasons of their non-fulfilment. We have concluded that the evidence on such count is sketchy and consequently we are not persuaded to uphold the finding of guilty for the charge under Section 498-A IPC. This, on first blush, seems to create a gap in the facts

and circumstances on which the prosecution hopes to bring home the charge of murder. But on closer scrutiny, it is clear that this cannot provide an escape route for the appellant.

46. The case reported as (2012) 6 SCC 174 Munna Kumar Upadhyay @ Munna Vs. State of Andhara Pradesh also involved the charge under Section 302 IPC based on circumstantial evidence. The person accused in the said case was found having given incorrect or false answers during the course of his statement under Section 313 Cr.P.C. It was in that context that the Supreme Court referred to the cases reported as (2008) 16 SCC 328 Asraf Ali v. State of Assam and (2010) 12 SCC 310 Manu Sao v. State of Bihar to point out that the object of Section 313 Cr.P.C. is to establish direct dialogue between the Court and the accused and if a point in the evidence is important against the accused and the conviction is intended to be based thereupon, it is necessary that the accused be questioned so as to afford to him an opportunity for explanation. The statement of accused at such stage is not directly evidence in the case but it can be used to test the veracity of the exculpatory nature of the statement, if any, made by accused. Since the accused in the said case had not only failed to explain his conduct in the manner in which every person of normal prudence would be expected to explain but also had given incorrect or false answers, it was held to be permissible for the Court to not only draw adverse inference against him but also to hold such conduct to “tilt the case in favour of the prosecution”.

47. The case reported as (2003) 11 SCC 299 Chandrashekarappa v. State of Karnataka had a similar scenario. The accused in that case was also charged with the murder of his wife. The evidence showed that relation of the appellant with the deceased wife had been strained. During the trial he

had also set up a false plea of *alibi*. The evidence clearly showed that at the relevant point of time the deceased and the accused only had been living together. The death had occurred on account of strangulation. In these circumstances, the Supreme Court held that it was for the accused to explain his own conduct and also as to how his wife had met with her death.

48. In (2013) 7 SCC 417 : (2013) 3 SCC (Cri) 544 Rumi Bora Dutta v. State of Assam it was held that :

“At this juncture, as mentioned earlier we proceed to advert to the issue pertaining to falsehood. In this context we may fruitfully refer to the authority in State of Maharashtra v. Suresh [State of Maharashtra v. Suresh, (2000) 1 SCC 471 : 2000 SCC (Cri) 263], wherein it has been held that a false answer offered by the accused when his attention is drawn to the circumstances, it renders the circumstances can be of inculcating nature. In such a situation a false answer can also be counted as providing “a missing link” for completing the chain. In the case at hand, the factum of recovery through the witnesses has been proven that the accused-persons had led to recovery. When it was put to them they had given an answer in the negative in a nonchalant manner. The incriminating materials were concealed and they were discovered being led by the accused person.”

49. In the case at hand, the false denial of the incriminating circumstance about he living with the deceased wife for at least 6-7 days prior to the murder and the false plea of *alibi* have filled the gap and provided the “missing link” to complete the chain of circumstances which do not permit any other inference to be drawn but one that points towards the guilt of the

appellant. False explanations or false plea of *alibi* render the surrounding circumstances to be inculpatory.

50. The prosecution had set up the illicit desire of the appellant for dowry to be the motive. It failed to bring home the said accusation. But, in the facts and circumstances proved, the onus would shift on to the appellant to explain as to how his wife had suffered homicidal death within the close confines of the house where he had taken her from her parental home only 6-7 days prior to the event. The act of he taking her along from her parental home to a room (apparently taken on rent or some such other terms) in a new locality, in the close proximity to the time and situation of her homicidal death, by itself is a telling circumstance indicative of guilty mind. It has been brought out vividly by the appellant himself that he had not been enjoying a happy relationship with the deceased woman. He was peeved over her quarrelsome nature, ill-behaviour and mental state that required medical assistance. The exasperation which he seems to have been feeling over the issues emanating from such conduct of the wife supplies the missing link as to the motive. The chain of facts and circumstances, thus, is rendered complete, the conjoint effect whereof is wholly consistent with the guilt of the appellant insofar as the charge of committing murder of his wife is concerned. The circumstantial evidence proved does not permit any other hypothesis including that of innocence.

51. For the reasons set out in earlier part of this judgment, we partly allow the appeal setting aside the finding of guilty, conviction and sentence for the offence under Section 498-A IPC. The appeal insofar as it challenged the conviction for the offence under Section 302 IPC and the order on sentence in such regard, however, fails. The findings, conviction

and order on sentence recorded by the learned trial court to that extent are upheld.

52. The criminal appeal stands disposed of accordingly. The appellant be informed of the result of the appeal and furnished with a copy of this judgment through Superintendent, Central Jail, Tihar.

(R.K.GAUBA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JANUARY 07, 2015
vld/mr/ik