

\$~R-27 (Part-A)

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

% **Reserved on: 24th August, 2015**
Date of Decision: 19th October, 2015

+ **CRL.A. 758/2012**

REHMATULLA Appellant

Through: Mr. Vivek Sood, Sr.Adv. with
Mr. G.D.Sharma and
Mr.Abhinav Sharma, Advs.

versus

STATE Respondent

Through: Ms. Aashaa Tiwari, APP with SI
Binod Kumar, P.S. Mehrauli.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. The appellant has been held guilty and convicted by judgment dated 10.01.2012 of the Additional Sessions Judge for the offence punishable under Section 302 of Indian Penal Code, 1860 ("IPC") on the charge of he having committed the murder of his wife Nafisa Khatoon ("the deceased") by strangulating her to death on the night intervening 17th -18th March, 2008 in a rented accommodation in the house of Tejpal in Village Asola, Fatehpur Beri, New Delhi. The findings of guilty were returned primarily on the basis of opinion of a

board of doctors as to the cause of death being asphyxia strangulation, it having occurred within the confines of the tenanted room where the deceased was statedly alone with the appellant during the night, coupled with his conduct including the undue hurry in taking the dead body for burial without the unnatural death having been reported.

2. By order dated 12.01.2012, the trial court sentenced the appellant to imprisonment for life with fine of ₹1000/- and in default to simple imprisonment for one month. By the appeal at hand, the appellant seeks to assail both the judgment and the order on sentence.

3. The fact that Nafisa Khatoon (also referred to as “Navisa” by some of the witnesses) had entered into a wedlock with the appellant and was living with him as his wife in the tenanted room taken in the house of Tejpal Kanwar (PW-12) and was found dead on the morning of 18.03.2008, is not disputed. These facts are brought home through the cogent evidence of Mohd. Suleman (PW-4), Mohd. Ziauddin (PW-3) and Mohd. Allaudin (PW-5), father, brother and brother-in-law, respectively of the deceased and find further corroboration from the evidence of Mohd. Yunus (PW-6), Mohd. Vakil (PW-7), Sonia Devi Shukla (PW-10), Rohtash (PW-11), Tejpal Kanwar (PW-12), Razia Khatoon (PW-13), Mohd. Zahir (PW-14) and Mohd. Idris (PW-16). While PW-12 is the landlord of the tenanted room used as residence by the appellant, the other said witnesses are local residents and neighbours, PW-10 being the immediate one, occupying one of the three rooms on the ground floor in the property of PW-12, the other room being in the tenancy of the appellant.

4. It must be mentioned, at this stage, that the deceased aged about 18 years at the time of death, as confirmed by the death report (Ex. PW-19/A) and the autopsy report (Ex. PW-2/A), was daughter of Mohd. Suleman (PW-4), a native of village Pulwaria, PS Kishan Pur, District-Supol, Bihar and was married to one Ansarul Haq, local resident of a nearby village. It appears that the said marriage had resulted in some differences and Nafisa Khatoon was brought back by her father to the parental home, then pregnant with the child of her husband while he (the husband) had contracted another marriage. It has been admitted by Mohd. Ziauddin (PW-3), brother of the deceased, that no divorce took place but Nafisa Khatoon started living separately from the husband. It further appears that, in due course, she delivered the child (a daughter) conceived out of the first marriage but the child, according to PW-4, did not survive long and died in Muradabad.

5. It also needs to be noted that both Mohd. Ziauddin (PW-3) and Mohd. Suleman (PW-4), brother and father of the deceased, themselves stated that Nafisa Khatoon had a love-affair, had eloped with the appellant and come to Muradabad, both eventually getting married. Questions of validity of her marriage with the appellant could arise in some proceedings, but nothing turns on this in this criminal case under section 302 IPC. Section 304 B IPC has not been invoked. The appellant has not made any effort to dispute the evidence about the fact that the deceased was living with him, for about three years as his wife.

6. It further emerges from the evidence, particularly of PW-3 and PW-4, that the couple (the deceased and the appellant) had initially set

up residence in Muradabad (U.P.) but later they shifted to Delhi and started residing as tenant in the house of Tejpal (PW-12), referred to by PW-3 by name of “Tejan”.

7. The house of Tejpal (PW-12) was a double storied structure. He (PW-12) would live on the first floor while the three rooms on the ground floor were let out. The let out portion stands depicted more clearly in the scaled site plans (Ex. PW-15/A & B), prepared by SI Mahesh Kumar (PW-15), the draftsman at the instance of the Investigating Officer Inspector Balram (PW-27). As mentioned earlier, Sonia Devi Shukla (PW-10), wife of one of the other tenants, lived next door. She was the first person who saw the appellant with the dead body in the tenanted room on the morning of 18.03.2008, the day the death came to light. It must, however, be added that PW-10 would not clearly state in her entire testimony that Nafisa Khatoon was dead when she had checked upon her, lying on the floor of the room but not responding to the efforts to wake her up.

8. The fact that Nafisa Khatoon had died an unnatural death, the cause of death being asphyxia, is proved by the prosecution beyond all manner of doubts. Mohd. Ziauddin (PW-3), the brother of the deceased was also living with her, and the appellant, in the tenanted room. His statement to this effect is not refuted by the appellant in any manner. Mohd. Ziauddin (PW-3) testified that on 17.03.2008 he, the appellant and the deceased had taken meals at about 9:30 PM and thereafter he had gone away on his duty. He would return home only on the next morning (i.e. 18.03.2008) at about 9:00 AM. He has stated that when he had left home, Nafisa Khatoon was in a good condition

but on return he had learnt about her death. Nafisa Khatoon had met Sonia Devi Shukla (PW-10), the neighbour, at about 9-9:30 PM on the previous night. She confirmed that she was “alright” at that point of time. She stated that in the morning hours, she had seen the appellant crying and, upon she questioning him, he had informed her that his wife (Nafisa Khatoon) was not getting up, not responding to his efforts to wake her to prepare tea. Sonia Devi Shukla (PW-10) had then checked Nafisa Khatoon lying on the floor but she would not respond. She had thereafter gone to the house of the owner Tejpal (PW-12) and informed him and he had also come and checked Nafisa Khatoon and then advised the appellant to take her to hospital but the appellant responded by stating that she had died. PW-10 had got scared and so left the place for the house of her mother in Fateh Pur.

9. Tejpal Tanwar (PW-12), the landlord, confirmed the word of PW-10 and deposed that she (PW-10) had come up to him at about 6:30 AM to inform about the condition of the lady (the deceased) staying in the ground floor and, accordingly, he had gone down to find her lying dead on the floor. PW-12 noticeably would, however, state that no one was present in the room at that point of time except the dead body. Upon his information, his acquaintance Rohtash (PW-11) and other relatives of the deceased and the appellant had also arrived in due course. He would put the number of relatives of the appellant and other persons who had gathered to be 20-30. Rohtash (PW-11) corroborated his word by stating that, on telephonic information from Tejpal (PW-12), he had reached the place and saw the dead body lying on the floor inside the tenanted room with no one else present and

about Tejpal (PW-12) calling for the husband and brother of the deceased.

10. A number of witnesses from the locality have deposed about the dead body of Nafisa Khatoon being taken by the appellant for burial to the graveyard in the morning hours of 18.03.2008. The witnesses who confirm the facts on this score include Razia Khatoon (PW-13), who had helped prepare the dead body for burial by washing it, at the instance of Mohd. Zahir (PW-14), who, in turn, confirms having assisted by going to the Mosque and arranging for *Taboot* (Coffin). Besides, Mohd. Yunus (PW-6), Mohd. Vakil (PW-7) and Mohd. Idris (PW-16) had accompanied the dead body and the mourners including the appellant, to the burial ground. Shamshuddin (PW-17) was working in *Badi Masjid*, Chandan Hola from where Mohd. Zahir (PW-14) had made the necessary arrangements for the burial. This witness, though hostile as to the allegations that came to be levelled as to the role of husband (the appellant), confirmed the facts narrated by Mohd. Zahir (PW-14).

11. Mohd. Ziauddin (PW-3), the brother of the deceased, has testified that when he had returned from duty at about 9:00 AM on 18.03.2008 he learnt about the death of Nafisa Khatoon and also the fact that the appellant had taken the dead body to *kabristan* (the burial ground) for last rites without informing him of the death. He has stated that he had then gone to the *kabristan* and found the appellant and other persons there with the dead body. Arrival of Mohd. Ziauddin (PW-3) in the burial ground and the protest lodged by him there, over the undue hurry at the burial, is confirmed by Mohd. Yunus (PW-6),

Mohd. Vakil (PW-7), Mohd. Zahir (PW-14) and Mohd. Idris (PW-16). These witnesses affirm that after objection being taken by the brother (PW-3), they had left the *kabristan* without the last rites being performed.

12. Mohd. Ziauddin (PW-3) has further deposed that from the *kabristan*, he had rushed to the police post Bhatti Mines, Fateh Pur Beri within the jurisdiction of police station Mehrauli and informed the police whereupon the police officials had accompanied him to the *kabristan*. His statement in this regard is confirmed by D.D. No.11 (Ex.PW-9/A) recorded at 1:30 PM on 18.03.2008 by Head Constable Shiv Lal (PW-9), who was on duty as DD writer in the police post. In the DD entry (Ex.PW-9/A), PW-3 had expressed suspicion over the death of his sister Nafisa Khatoon for the reason she had retired for the night on the previous day with her husband in good condition.

13. The matter arising out of the above DD entry was made over initially to ASI Bali Ram (PW-18), who set out from the police post accompanied by Constable Shesh Pal (PW-20). Evidence of ASI Bali Ram (PW-18) and Constable Shesh Pal (PW-20) read with that of Mohd Ziauddin (PW-3) proves, without any contest from the defence, the fact that upon arrival in *kabristan* Chandan Hola, ASI Bali Ram (PW-18) had found the dead body of Nafisa Khatoon lying there, wrapped in white clothes, under a tree. ASI Bali Ram (PW-18) would testify that the appellant was also present with the dead body and upon enquiry had told him that his wife, the deceased, had died on the previous night of ailment from which she had been suffering for the last few days. ASI Bali Ram (PW-18) claims to have checked the dead

body and seen a bluish colour mark on the neck. He informed Inspector (then SI) Govind Chauhan (PW-22), in-charge of police post, telephonically and pursuant to this intimation PW-22 also reached the place. Mohd. Ziauddin (PW-3) expressed doubts before SI Govind Chauhan (PW-22) that the death was not natural.

14. SI Govind Chauhan (PW-22) had informed Mr.R.K.Saini (PW-19), the Executive Magistrate of the area. He (PW-22) prepared a *rukka* (Ex.PW-22/A) setting out the aforementioned facts and circumstances including what had been reported in DD No. 11 A (Ex.PW-9/A) and got the FIR (Ex.PW-8/A) registered at 7:20 PM on 25.03.2008. The crime team including Constable Anand (PW-21) had reached the place. The six photographs (Ex.PW-21/A-1 to A-6) developed by PW-21 on the basis of negatives (Ex.PW-21/B-1 to B-6) have been proved by him. These photographs depict the dead body of Nafisa Khatoon, lying on a wooden plank, wrapped in white cloth, near a pit, apparently dug out as the grave meant for her burial. Three photographs, (Ex.PW-21/A-4 to A-6), in particular, vividly show the ligature mark around the neck.

15. As per the evidence of the aforementioned police officials, the dead body was shifted to the mortuary of All India Institute of Medical Sciences (AIIMS) and a request was made for post-mortem examination to be conducted, supported by inquest papers including death report (Ex.PW-19/A), the dead body having been identified by Mohd. Allauddin (PW-5). The autopsy was performed in the mortuary of AIIMS on 22.03.2008 by Dr. Arvind Kumar (PW-2) resulting in report (Ex.PW-2/A). During the inquest proceedings, it had been

claimed by the appellant that the deceased had been suffering from pain in the abdomen for many days and, on this account, she had taken some medicines on 17.03.2008 but had died on 18.03.2008.

16. The autopsy doctor narrated his findings in the post-mortem report (Ex.PW-2/A) as under:-

“On examination rigor mortis has passed out. Greenish discolouration all over trunk in patches with marbling. Body was brought in white sheet. Blood staining serous discharge coming out from nostril. Face congested. Finger tip bluish cyanosed.

There was a ligature mark present in the form of two patches as shown in diagram present over both sides sternomastoid muscle which were 8 cm below the respective mastoid tip and 10 cm above sterna notch. Haemorrhage also seen on the right end of hyoid bone. Thyrohyoid complex intact. The neck circumference was 13 cm margins of ligature mark were regular with slight red reaction and were horizontally placed.

Internal findings.

Brain and meninges were congested.

Lungs were congested and edematous.

Stomach-homogeneous fluid food about 400 ml with putrefactive changes in stomach wall.

Kidney congested.

Genital organ-uterus- in menstruating stains.

Vicera was preserved for toxicology analysis.

The cause of death was kept pending. Time since death was opined about four days.”

17. While the viscera report was awaited, Inspector Balram (PW-27), the Investigating Officer moved an application dated 16.06.2008 (Ex.PW-27/A) before the consultant senior doctor of the department of forensic medicine, AIIMS seeking opinion on the basis of photographs of the dead body of the deceased about the possibility of use of hands

resulting in abrasion marks. The matter was examined by Dr.Sudhir Gupta (PW-30) Associate Professor in the department of forensic medicine, AIIMS. He recorded his opinion (Ex.PW-27/A, also Ex.PW-30/B) on 16.06.2008, noting that the ligature mark measuring 3x1.5 cm, generally caused by ligature material was a type of abrasion, though considering the dimensions of the injury, it could possibly have been caused by hand or fingernails or friction.

18. The viscera preserved by the autopsy doctor was sent, in due course, to Forensic Science Laboratory (FSL), which issued the result (Ex.PX) on 19.08.2008 stating that “*upon the chemical examination, thin Layer Chromatography & GC-MS examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and insecticides could not be detected*”. The FSL report was taken to Dr.Arvind Kumar (PW-2) for his opinion, as per application dated 02.09.2008 (Ex. PW-27/B) of Inspector Balram (PW-27). The doctor, vide his noting dated 11.09.2008 (Ex.PW-2/B), opined that the cause of death was “asphyxia” as a result of hanging, which was ante-mortem in nature.

19. On 12.09.2008, Inspector Balram (PW-27) moved another application (vide Ex.PW-27/C) before the autopsy doctor drawing his attention to the opinion earlier given on 16.06.2008 by Dr.Sudhir Gupta (PW-30) and requesting that the matter be re-examined and opinion given afresh. The autopsy doctor (PW-2) gave his fresh opinion (Ex.PW-2/C) on 05.12.2008, *inter alia*, based on the post-mortem examination report, FSL report, subsequent opinions and the

six photographs and reiterating his earlier view that “*possibility of hanging cannot be ruled out*”.

20. On 27.01.2009, Inspector Balram (PW-27) addressed a fresh request to the concerned doctor in the department of forensic medicine, AIIMS referring, *inter alia*, to the earlier opinions dated 16.06.2008 of Dr.Sudhir Gupta (PW-30) and of 11.09.2008 followed by one of 05.12.2008 given by Dr.Arvind Kumar (PW-2) and requesting views on the question as to whether the injuries noted in the post-mortem report could be described as homicidal or suicidal, and, in case of homicide, whether it could have been caused with use of hands for strangulation. As per the noting (Ex.PW-30/C), on the said application, Dr.Sudhir Gupta (PW-30) referred the matter initially to Dr.Adarsh Kumar, Assistant Professor. It appears that nothing happened immediately on this request. Eventually, on 27.02.2009, Dr.D.N. Bhardwaj (PW-28), Head of the Department of Forensic Medicine, AIIMS constituted a Board including himself as the Chairman with Dr.Arvind Kumar (PW-2) and Sudhir Gupta (PW-30) as the members.

21. The medical board gave its opinion dated 02.03.2009 (Ex.PW-2/D) noting, *inter alia*, that the autopsy report had showed congestion of face and cyanosis on the nail beds, indicative of violent asphyxia death. There was blood-stained serous discharge from nostril. Ligature mark was horizontally placed and in the middle of the neck. In the views of the board (comprising PW-28, PW-30 and PW-2), the death due to strangulation by ligature could not be ruled out and use of hands (manual strangulation) was possible if some cloth was intervening between hands and the neck. The ligature strangulation, as

per the Board's opinion, was generally homicidal in nature but it left the issue to be considered by the investigating agency on the basis of circumstances.

22. As noted earlier, PW-4 and PW-3, the father and the brother respectively of the deceased have indicated that the deceased had married the appellant out of her own choice and volition. There is nothing in their statements as can lead to doubts that she may not have been happy or may have been subjected to any harassment or cruel conduct in the society of the appellant. Rather, PW-3 in the course of his statement (Ex.PW-3/A) made before the SDM on 21.03.2008 had confirmed that the appellant had never harassed the deceased. On the contrary, the evidence suggests that the couple was living together happily, their immediate neighbour (PW-10) confirming that they were living peacefully and she had never seen them quarrelling with each other.

23. When ASI Bali Ram (PW-18) had reached the graveyard for inquiry into the report made by DD No. 11 and on the basis of information given by Mohd. Ziauddin (PW-3), the appellant had explained to him that the deceased had been ill for the last few days and had taken some medicines on the previous night. The fact that she had been keeping unwell for some days was confirmed by the neighbours who were present. PW-18, in the course of his statement, affirmed such to be the information given to him at the initial stages. In contrast, Mohd. Ziauddin (PW-3) and Sonia Devi Shukla (PW-10), the brother and the neighbour respectively of the deceased, who had met her on the previous night, stated that she was in good condition at

that stage. PW-10 went to the extent of affirming that the deceased was not sick but a healthy lady. The landlord Tejpal Kanwar (PW-12), on the other hand, corroborated the defence plea by stating that Nafisa Khatoon had been ill and was under treatment. He conceded as correct the defence suggestion that appellant had taken her to Nanda Hospital and she was under medication as per the prescription given.

24. During his statement under Section 313 Cr.P.C., the appellant simply denied the incriminating evidence as incorrect claiming that, due to enmity, Mohd. Ziauddin (PW-3), the brother of the deceased wife, had falsely implicated him. He examined Bablu Sahai (DW-1), an acquaintance, to bring on record that he (the appellant) had spent the entire night (the night intervening 17/18-03.2008), beginning 9-10:00 PM, at his residence in village Fateh Pur, Mehrauli and that on telephonic information given by the landlord (PW-12) that his wife was unwell he had left for the said place.

25. We are not convinced that any illness or medical disease was the cause of death or the deceased committed suicide or took her own life for the said reason. The deceased may have had history of ailment and could be under medication but she was certainly not suffering from any chronic or serious disease. It certainly was not the cause of asphyxia, which in the present case was a result of violence and not due to natural causes.

26. The theory of *alibi*, attempted to be projected through the testimony of DW-1, also has no legs to stand on. Throughout the prosecution evidence, it was never the case of the appellant that he had

not been in the house with the deceased on the night in question. No such suggestions were given to Mohd. Ziauddin (PW-3) or Sonia Devi Shukla (PW-10) who had seen the appellant with the deceased on the previous night around the time of dinner. In fact, Suman Devi Shukla (PW-10) affirmed on oath having seen the appellant alongside the victim on the next morning, then lying unresponsive on the floor of the tenanted room. It was not even suggested to her during cross-examination that her statement to this effect was not truthful.

27. In the face of the FSL report, it cannot be a case of poisoning. In absence of any evidence to such effect, the death cannot be related in any manner to the medication which may have been prescribed, or due to natural illness suffered by the deceased. The autopsy report and the medical opinion given on the basis of the findings recorded therein, unmistakably show it to be a case of violent asphyxia death. The ligature mark speaks and establishes that it is a case of un-natural death.

28. The defence, however, has argued vociferously that, given the nature of the ligature mark, the possibility of the opinion of Dr.Arvind Kumar (PW-2) earlier given, about it being a case of asphyxial hanging being correct, cannot be ruled out. It is submitted that the opinion of the board of doctors given on 02.03.2009 vide (Ex.PW-2/D) that the death could be by ligature strangulation is speculative and not correct. Reliance is placed on *Subramanian vs. State of Tamilnadu 2009 SCC 415*, *Babu Ram vs. State of Madhya Pradesh AIR 2002 SC 758* and *Dinesh Kumar vs. State, NCT of Delhi 2014 (13) DLT 709*. It is the submission of the counsel for the appellant that the opinion of the

medical board cannot be accepted unless it confirms to the tests laid down in authoritative texts on medical jurisprudence.

29. Violent deaths resulting from asphyxia include death due to hanging or by strangulation. Hanging is a form of death produced by suspending the body with a ligature round the neck, the constricting force being the weight of the body or a part of the body weight. Strangulation, in contrast, results from constricting the neck by means of a ligature or by any other means without suspending the body and may also take the form of throttling, wherein constriction is produced by the pressure of the fingers and palms upon the throat or any other solid substance.

30. In hanging, the site of the ligature on the neck affects the amount and time of the onset of asphyxial symptoms. It occurs in a few seconds when it is over the cricoids cartilage and in one or two minutes when it is on the larynx or on or above the hyoid bone. The ligature in such cases is usually situated above the thyroid cartilage, and the effect of its pressing the neck in that situation is to force up the epiglottis and the root of the tongue against the posterior wall of the pharynx. Hence, the floor of the mouth is jammed against its roof, and occludes the air passages, also the uvula and soft palate are pushed upwards and the laryngeal opening is blocked by the depressed epiglottis. Pertinently, death from hanging can be achieved even in a sitting, kneeling or lying position, and a pull with little force is enough to cause unconsciousness and death. The ligature mark in cases of hanging is usually situated above the thyroid cartilage between the larynx and the chin, and is directed obliquely upward following line of the mandible (lower jaw)

and interrupted at the back or may show an irregular impression of a knot, reaching the mastoid processes behind the ears towards the point of suspension. The mark may be found on or below the thyroid cartilage, especially in case of partial suspension.

31. On the other hand, in asphyxia strangulation the appearances on the neck would vary according of the means used in such cases. Ligature mark is a well-defined and slightly depressed mark corresponding roughly to the breadth of the ligature, usually situated low down in the neck below the thyroid cartilage, and encircling the neck horizontally and completely. The mark may be oblique as in hanging, if the victim has been dragged by a cord after he has been strangled in a recumbent posture, or if the victim was sitting and the assailant applied a ligature on the neck while standing behind him, thus using the force backward and upward. In some cases, the mark in the neck may not be present at all, or may be very slight, if the ligature used is soft and yielding like a stocking or scarf, and if it is removed soon after death. If fingers are used (throttling), marks of pressure by the thumb and the fingertips are usually found on either side of the windpipe. The thumb mark is ordinarily higher and wider on one side of the front of the neck, and the finger marks are situated on its other side obliquely downwards and outwards, and one below the other. However, the marks are sometimes found clustered together, so that they cannot be distinguished separately.

32. In asphyxia by strangulation, the face is puffy and cyanosed, and marked with petechiae. Bloody foam escapes from the mouth and

nostrils, and sometimes pure blood issues from the mouth, nose and ears, especially if great violence has been used.

33. In cases of hanging the neck is generally stretched and elongated, which is not the case in death by strangulation. In strangulation, the external signs of asphyxia are normally very well marked, which may not be the case in hanging. Again, strangulation generally results in bleeding from nose, mouth and ears is a rare phenomenon in death by hanging.

34. Notwithstanding the above-noted observations in *Modi's Medical Jurisprudence & Toxicology*, (Twenty-Second Edition published by LexisNexis, Butterworths), it has been argued by the counsel for the appellant that the manner in which the medical opinion here has oscillated from extreme of one of death by hanging to another of manual strangulation, the benefit of doubts, resulting therefrom, must be extended to the accused. It is argued that the injury found on the dead body, was not indicative of manual ligature strangulation, particularly, because in such cases the ligature furrow would generally run horizontally round the neck on its front and sides. Reliance was placed, particularly, on the comparison between ligature marks resulting from hanging and strangulation, as appearing in *Sadikhusen G.Momin, et. Al, Pattern of Ligature Mark in Cases of Compressed Neck in Rajkot Region: A Prospective Study, J. Indian Acad Forensic Med Jan-Mar 2012, Vol. 34, No. 1* quoted as under:

“A running noose can tighten at the time of suspension and may then produce a mark which takes a horizontal turn but it is likely to be above the thyroid cartilage. Ligature mark

depends on the nature and position of the ligature used, and the time of suspension of body after death. If the ligature is soft, and the ligature removed immediately after death, there may be no mark. Again, the intervention of a thick and long beard or clothes on the neck leads to the formation of a slight mark. Sometimes, the pattern of the ligature material is impressed on the skin and a characteristic diagonal mark of the strands found when the rope is used. The wide band of cloth when used as a ligature on the bare skin may cause a narrow ligature mark, due to tension lines in the stretched cloth. The mark is a groove or furrow the base is pale, hard leathery and parchment like and margins are red and congested. Ecchymoses and slight abrasions in the groove are rare, but may be found in some cases for instance in judicial hanging.

Usually only one mark is found. Multiple marks may be present due to multiple turns around the neck or upward displacement after application due to fall. The mark is usually situated above thyroid cartilage between larynx and the chin and is directed obliquely, upwards following the line of mandible and interrupted at the back or may show an irregular impression of a knot, reaching the mastoid processes behind the ears towards the point of suspension.

The mark may be found on or below the thyroid cartilage, especially in case of partial hanging. It may be circular if a ligature is first placed at the nape of neck and then its two ends are brought horizontally forwards and crossed, and carried upwards to the point of suspension from behind the angle of the lower jaw on each side. The mark will be circular and oblique if a ligature is passed round the neck more than once. Near the position of the knot, it is like an inverted "V". In strangulation, ligature may be applied as one turn around the neck or even less, as homicide has been perpetrated by assailant pulling U shaped ligature against the front and sides of neck, while standing at the back."The deceased in the tenanted room in the night intervening 17th – 18th March, 2008. These facts manifest and bespeak. They remonstrate and negate death by hanging.

35. The ocular evidence adduced in the case at hand clearly shows that the appellant had never claimed, at any stage, that his wife Nafisa Khatoon had committed suicide by hanging. In his statement, under Section 313 Cr.P.C., he did not come with any explanation whatsoever as to the cause of death. He vaguely attributed false implication to enmity with his brother-in-law (PW-3) without explaining as to what was the cause of enmity. Merely attributing enmity or false implication cannot explain the death of the wife living under the same roof in one room tenement where the only other person present, through the night, was the appellant himself. In the course of cross-examination of Mohd. Ziauddin (PW-3), instead, it was suggested by the appellant that his wife had been “killed” by her first husband. This theory was based on admission that it was a case of “murder” inasmuch as it was also suggested to PW-3 that the appellant had no role in the “murder” of Nafisa Khatoon. No suggestions on these lines were given to any other witness. No evidence has been led about the role of a third person in the death of Nafisa Khatoon. What is most significant is that no one saw Nafisa Khatoon in hanging position. In fact, no signs of hanging were found or pointed out at any stage. Sonia Devi Shukla (PW-10) and Tejpal Tanwar (PW-12) have not deposed that the appellant had claimed and stated that Nafisa Khatoon had committed suicide by hanging herself. No such claim or assertion was made. Undoubtedly, and it is established beyond challenge that the appellant was present with the deceased in the tenanted room in the

night intervening 17th – 18th March, 2008. These facts manifest and bespeak. They remonstrate and negate death by hanging.

36. In our judgment, the opinion finally given by the board of doctors in their joint report (Ex.PW-2/D) is the correct assessment. Noticeably, Dr.Arvind Kumar (PW-2) who had conducted the post-mortem examination and who had first speculated it being a case of hanging, had revised his opinion as a member of the board. The evidence unmistakably shows that the appellant was present in the same room where the death had occurred. No ligature material has been found at the scene of incident.

37. If the death had been by hanging, to the knowledge of the appellant, with him being present at the scene, it was within his special knowledge as to how and with what ligature the hanging had been executed. The findings of the autopsy report are consistent with the opinion that it was a case of strangulation and not one of asphyxia hanging. The neck was not found stretched or elongated. The external signs of asphyxia were very well marked and there was bleeding from the nostrils. Merely because of haemorrhage on the right end of the hyoid bone, an inference cannot be drawn that it could be only a case of hanging to the exclusion of all possibility of strangulation.

38. Thus, we affirm the final medical opinion and conclude that Nafisa Khatoon had been strangled to death, possibly with some piece of cloth having been used as ligature.

39. We are satisfied that the prosecution has been successful in bringing home the following facts and circumstances:-

- (i) The deceased Nafisa Khatoon, daughter of Mohd. Suleman (PW-4) was married at a very young age to one Ansarul Haq, a native of District Supol, Bihar. She conceived of the said marriage but even before the child could take birth, her husband deserted her and married another woman. Consequently, Nafisa Khatoon came back to the parental home.
- (ii) The appellant and the deceased initially lived with her parental family, but later shifted to Muradabad where she delivered a daughter (conceived from her first husband), who, however, did not survive long.
- (iii) Nafisa Khatoon developed liking for the appellant and, eventually her parental family relenting she settled in matrimony with the appellant about three years prior to her death (on 17-18/03/2008).
- (iv) The couple (the deceased and the appellant) shifted to Delhi and set up residence in a one room tenancy on the ground floor in the house of Tejpal Kanwar (PW-12) in village Asola, Fateh Pur Beri, New Delhi.
- (v) Mohd. Ziauddin (PW-3), the brother of the deceased had also shifted to Delhi and was living with his sister (the deceased) and her husband (the appellant) in the same tenanted room.

- (vi) On 17.03.2008, the appellant, the deceased and her brother Mohd. Ziauddin (PW-3) took dinner around 9:30 PM, around which time the next door tenant Suman Devi Shukla (PW-10) also met and interacted with the deceased, she being in good state of health.
- (vii) After dinner, Mohd. Ziauddin left for his night duty on the night of 17.03.2008 and returned the next morning (i.e. on 18.03.2008) around 9:00 AM.
- (viii) Sometime about 6:30 AM on 18.03.2008, Suman Devi Shukla (PW-10) found the appellant crying and, upon her questioning, he told her that his wife Nafisa Khatoon was not getting up and upon she going near, she saw Nafisa Khatoon lying on the floor, not responding on being checked.
- (ix) Suman Devi Shukla (PW-10) informed the landlord (PW-12) about the abovementioned condition of Nafisa Khatoon and when he came downstairs and saw the woman lying on the floor, he asked the appellant to take her to hospital, in response to which the appellant told him that his wife had died.
- (x) By the time the landlord (PW-12) came downstairs, the appellant had gone away from the scene and had to be called back by the former.

- (xi) The autopsy findings reveal that Nafisa Khatoon had died as a result of manual strangulation possibly with some piece of cloth having been used as ligature, it having left a ligature mark around her neck.
- (xii) The appellant knew that Nafisa Khatoon had died since he himself so stated to the landlord and yet he had given a misleading information to the neighbour that she was not waking up.
- (xiii) The appellant did not report the death either to the police or to any of the relatives of the deceased, particularly, her brother Mohd. Ziauddin (PW-3), who was living with him and the deceased under the same roof.
- (xiv) Even before Mohd. Ziauddin (PW-3) had returned from his night duty, the appellant collected some people from the neighbourhood and arranged for the dead body to be prepared for burial and took it to the graveyard for being buried.
- (xv) Upon Mohd. Ziauddin (PW-3) learning about the unnatural death of his sister Nafisa Khatoon, stopped the burial and lodged information with the police (vide DD No. 11) recorded at 1:30 PM on 18.03.2008 expressing doubts whereupon the police took the dead body in its possession for investigation.

(xvi) On being questioned in the graveyard, the appellant tried to give explanation about the deceased being under treatment. Nafisa Khatoon did not die a natural death or due to illness. She died due to violent asphyxia.

40. In the case *Babu Ram* (supra), the medical expert was found to be unsure as to the cause of death. Indeed, in the case at hand, the autopsy doctor (PW-2) had earlier given a tentative opinion conjecturing it being a case of death by hanging. The opinion finally formulated by the board of doctors, which confirms of the tests laid down in authoritative texts on medical jurisprudence, has left no scope for any doubts that the death was due to strangulation. Thus, the ruling in *Babu Ram* (supra) has no application to the case of the appellant.

41. Any assertion that Nafisa Khatoon had committed suicide by hanging herself is make believe and farfetched. Sonia Devi Shukhla (PW-10) and Tej Pal Kanwar (PW-12), who were first to visit the tenanted room, negate and dispel theory of suicide. The appellant, who was present at least when Sonia Devi Shukla (PW-10) had visited the tenanted room and spoken to, did not claim or state so. The witnesses did not notice any sign of hanging. Nafisa Khatoon was lying down. The appellant professed that she had not got up from sleep. Apparently, the appellant wanted Nafisa Khatoon's death to pass off as a natural death and not a death of violence.

42. Conduct of the appellant at that time as noticed by Sonia Devi Shukla (PW-10), Tej Pal Kanwar (PW-12) and his attempt to involve others but not inform the deceased's brother Mohd. Ziyauddin (PW-3)

and his taking the body to *Kabristan* corroborate and support the prosecution version.

43. Once we accept that the appellant was present with the deceased Nafisa Khatoon, his wife and partner in the tenanted room in the intervening night between 17th and 18th March, 2008, then the law requires that the appellant should give cogent explanation how and in what manner Nafisa Khatoon had suffered the violent death. The appellant faults and fails on this count.

44. On considering the cumulative effect of the facts and circumstances that have been established by the prosecution, we have no hesitation in concluding that it is the appellant who had strangled Nafisa Khatoon to death on the night of 17-18.03.2008 in the tenanted room. There was no one else present under the said roof during the night but the deceased and the appellant. The brother of the deceased had left for night duty and returned home the next morning after the death had been discovered. When he left for the night duty, the brother had seen Nafisa Khatoon in good state of health. Even the neighbour Suman Devi Shukla (PW-10) had interacted with the deceased around the same time when there was nothing remiss. The appellant was seen with the dead body by the neighbour Suman Devi Shukla (PW-10) in early morning hours. Though the death had occurred by strangulation, the appellant gave out a false story that the deceased had been unwell and was not getting up even though the husband (the appellant) was trying to wake her up. When Suman Devi Shukla (PW-10), the neighbour, went upstairs to call the landlord, the appellant slipped away from the scene. Thus, when the landlord came down he did not

find the appellant around. The death was unnatural. Apparently, it would have been an unexpected event for everyone else concerned. The appellant, however, was in a tearing hurry to get his wife buried. He would not even wait for the brother of the deceased to come back home. A wait at least for him would be the natural expectation of the brother who was living with the couple in the same room. The explanation at the burial ground that the wife had been under some medication was also unfounded and given out by the appellant apparently to shift focus of the investigating police.

45. The unnatural death of Nafisa Khatoon occurring due to asphyxia strangulation was clearly a case of culpable homicide. Since it had occurred within the close confines of the room used as residence, there was a corresponding burden on the appellant, the only other inmate of the house at the relevant time, to give a cogent explanation as to how the death had occurred. As discussed above, death by hanging, as the deceased had committed suicide, is unreservedly ruled out. The appellant has failed to discharge this onus and, thus, cannot escape the natural inference that it is he who was the perpetrator of the act resulting in the homicidal death (*Trimukh Maroti Kirkan vs. State of Maharashtra* (2006) 10 SCC 681 and *State of Punjab vs. Karnal Singh* 2003 Crl.L.J. 3892).

46. It is true that the prosecution has not been able to bring out any clear motive which may have impelled the appellant to bring about the death of Nafisa Khatoon. But, in the factual matrix of the case, the same should not lead to any doubts as to the complicity of the appellant. We close the issue by referring to the following

observations of the Supreme Court in the case reported as *State of U.P. vs. Babu Ram* AIR 2000 SC 1735:

“We are unable to concur with the legal proposition adumbrated in the impugned judgment that motive may not be very much material in cases depending on direct evidence whereas motive is material only when the case depends upon circumstantial evidence. There is no legal warrant for making such a hiatus in criminal cases as for the motive for committing the crime. Motive is a relevant factor in all criminal cases whether based on the testimony of eye-witnesses or circumstantial evidence. The question in this regard is whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for such, motive could then be counted as one of the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the respondent. Even if the Investigating Officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law.”

(Emphasis supplied)

47. Unlike the case at hand, where we have reached a definite finding that the death of Nafisa Khatoon was on account of asphyxia strangulation, in the case of *Dinesh Kumar* (supra), the death was suicidal which finding resulted in acquittal from the charge under Section 302 IPC. The factual matrix, thus, is distinguishable and the case cited is of no assistance to the appellant.

48. For the foregoing reasons, we do not find any merit in the appeal. In our considered opinion, the learned trial court has appreciated the evidence gathered during the trial appropriately and has

reached correct conclusions. The guilt of the appellant is writ large on the facts and circumstances proved.

49. In a case of asphyxia strangulation, there cannot be a debate over the fact that death was intended. Thus, the prosecution has successfully proved the charge under Section 302 IPC against the appellant.

50. In the result, the appeal is dismissed.

51. The appellant be informed of the result through the Superintendent Jail and a copy of this judgment be delivered to him.

R. K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

OCTOBER 19, 2015
mr