

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Criminal Appeal 929/2011**

% **Reserved on: 9th January, 2015**
Date of Decision: 4th February, 2015

Pawan Singh **....Appellant**
Through Mr. Ranbir Singh Kundu and
Mr. Rajeev Sirohi, Advocates.

Versus

State & Ors. **...Respondents**

Through Ms. Aasha Tiwari, APP.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J.

Pawan stands convicted for murder of his wife Dimple, in the intervening night between 17th and 18th September, 2009 at her matrimonial home at A-478/11, Gali No. 11, Mandoli Extn., Delhi. The impugned judgment dated 28th May, 2011, arises out of FIR No.66/2010, P.S. Harsh Vihar registered under Section 302 of the Indian Penal Code, 1860 ('IPC', for short). By the order on sentence dated 6th June, 2011, the appellant has been sentenced to undergo imprisonment for life and to pay fine of Rs.7,000/- and in default to undergo rigorous imprisonment for one year.

2. The appellant challenges his conviction, *inter alia*, on the ground that he was not at home at the time of occurrence; Section 106 of the Evidence Act, 1872 has been wrongly invoked; prosecution has

not been able to show and establish motive as the illicit relationship or marriage with Simple has not been proved; and cause of death of Dimple has not been established.

3. We have considered the said contentions but do not find any merit in the same for the reasons recorded below and accordingly sustain and uphold the conviction of the appellant.

4. At the outset, we notice and record our annoyance and anguish in grave and serious lapses on the part of the police in not immediately registering the First Information Report (FIR) inspite of a written complaint (Ex.PW-2/A) by Dharampal Singh (PW2) father of the deceased Dimple. FIR was registered only after Dharampal Singh (PW2) had filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 ("Cr.P.C" for short) and the Metropolitan Magistrate vide order dated 1st April, 2010 (Ex. PW-12/C), had issued the following directions:-

"Material perused. Arguments on applications U/s 156(3) Cr.P.C. heard. It is requested that matter be referred to the concerned SHO for registration of FIR. I have perused the present complaint. After perusal of the complaint and material on record, I am satisfied that the cognizable offence is made out. Accordingly, SHO P.S. Harsh Vihar is directed to register an FIR within the meaning of the provision of section 156 (3) Cr.P.C. It is however, made clear that this order is no direction to the SHO to immediately arrest the accused. The SHO/Investigating Officer should first investigate the matter and find out whether actually any offence have been committed or not. The investigating Officer may arrest the accused only if the circumstances so warrants. It is now the settled law that power to arrest is different from justification to do so. Reference may be made to Court on its Motion Vs. CBI Volume 109, DLT 2004, page 494. After completion of investigation, the SHO to file final report or

chargesheet U/s 173(2) of Cr. PC as per result of investigation.”

5. Undisputedly, the deceased was taken to the GTB Hospital, Shahdara by the appellant at about 2.10 AM on 18th September, 2009. The MLC (Ex.PW-11/A) records that the patient was brought by her husband having mobile number, 9999916439 and that the patient was brought to the casualty in an unconscious state. Blood pressure, pulse, cardiac and respiratory activities were absent and not palpable. The Electrocardiogram (ECG) was a straight line and pupils were dilated and fixed. She was declared ‘brought dead’. The MLC was proved by Dr. Satish Chandra (PW11) who also proved the diagnostic slip marked as Ex.PW-11/B. The application for post mortem of the said dead body was made vide inquest report (Ex.PW-10/A) by ASI Rakesh Tyagi (PW10) on 18th September, 2009 along with the death report of unnatural death by violence (Ex.PW-10/B). Age of the deceased Dimple as mentioned in the inquest report (Ex.PW-10/A), unnatural death report by violence (Ex.PW-10/B) and in the MLC/Medical record (Ex.PW-11/A) was 30 years.

6. The Post mortem was conducted by Dr. Meghali (PW6) at about 12 PM on 18th September, 2009. PW6 in the report (Ex.PW-6/A) mentions that the deceased was wearing 6 yellow glass bangles on right wrist and 8 yellow glass bangles on left wrist. The bangles were intact and a black thread was present around her neck. PW6 noticed and has recorded the following external injuries:

“1. Reddish brown dry hard parchmented abrasion measuring 5 x 1.5 cm, horizontally placed on front of neck in midline 7 cm above suprasternal notch overlying the

thyroid cartilage. On fine dissection the skin and subcutaneous tissue above and below the abrasion were markedly congested. On further dissection extravasation of blood seen in the soft tissues. On both sides of the neck more on the right side. Bruising of the neck muscles was seen. Thyroid hyoid and laryngeal apparatus was intact.

2 Bluish contusion 2 in number each measuring 0.8 x 0.6 cm and 0.6 x 0.4 cm present medial aspect of right arm, 21 cm below right axilla and 3 cm apart.

3 Bluish contusion measuring 1.5 x 2 cm present on medial aspect of right arm 8 cm above right elbow joint.

4 Bluish contusion measuring 1.5 x 1.5 cm present on medial aspect of left arm 14 cm above left elbow joint.

5 Bluish contusion measuring 7 x 2.5 cm present on medial aspect left arm obliquely placed 14 cm above left elbow joint.

6 Bluish contusion measuring 1.5 x 0.7 cm present on medial aspect of left arm 21.8 cm above elbow joint.

7 Bluish contusion measuring 1.4 x 1 cm present on lateral aspect of left arm 18 cm above left elbow joint

8 Lacerated wound measuring 0.5 x 0.2 x 0.2 cm present on medial aspect of ventral surface of right wrist joint.

9 Reddish scratch abrasion semi lunar in shape 2 in number each measuring 0.4 x 0.1 cm and 0.3 x 0.1 cm and 0.2 cm apart present on back of left forearm 3 cm below left elbow joint.”

On internal examination the following injuries were observed:

“On internal examination skull and scalp were NAD brain was 1250 grams and congested, neck as described in injuries above rib cage NAD, lungs right lung 500 gram and left 450 gram both were congested and edematous, heart was 200 grams and congested.

Stomach contained about 100 ml grey white substance mixed with fluid, walls were markedly

congested, multiple haemorrhages patches were present on the wall, intestine were congested, liver 1500 grams, spleen 200 grams, kidneys 100 grams each, were all congested. Pelvis and vertebrae were NAD, uterus was empty, urinary bladder was empty and NAD.”

7. PW6 directed that the viscera be preserved for ‘Arsenic’, ‘Rodenticide’, ‘Aluminium phosphide’ or any other poison. On the question of cause of death, PW6 had recorded the following observation in the post mortem report (Ex.PW6/A):-

“Time since death 12 hour. At the time of conducting post mortem, the opinion regarding the cause of death was withheld which could be given after the receipt of chemical analysis report of viscera which was sent to CFSL.”

8. ASI Rakesh Tyagi (PW10), to whom the investigation was marked, obtained the said post mortem report (Ex.PW-6/A). In his Court deposition, ASI Rakesh Tyagi (PW10) testified that the clothes and viscera samples of the deceased were preserved. The viscera was sent to the CFSL on 28th October, 2009. Amarpal Singh (PW4), Sr. Scientific Officer (Chemistry), FSL, Delhi in his report dated 4th February, 2010 (Ex.PW-4/A), opined that on chemical TLC and Ion-chromatography examination; metallic poisons, Ethyl and Methyl alcohol, Cyanide, Phosphide, Alkaloids, Barbiturates, tranquilizers and pesticides were not detected. Thus, PW4 affirmed that it was not a case of death due to poisoning. The said report and the testimony of PW4 remain unchallenged.

9. Subsequently, ASI Rakesh Tyagi (PW10) made an application dated 6th February, 2010 (Ex.PW-10/D) to the Department of Forensic Medicines and Toxicology Dilshad Garden, Delhi for obtaining final opinion regarding the cause of death of Dimple, and Dr. Meghali

(PW6) vide her opinion dated 10th February, 2010 (Ex.PW-6/B), recorded that the cause of death in the present case was compression of neck by a hard and blunt force object. After about 15 days, ASI Rakesh Tyagi (PW10) made another application (Ex.PW-10/E) seeking clarification from PW6 whether the death was homicidal, suicidal or accidental and whether the injuries were ante-mortem or post-mortem. To us, it is obvious from the opinion (Ex.PW6/B) that the death by compression of neck by hard or blunt object could be homicidal and not suicidal or accidental. The external injuries noticed on the body as mentioned in the post mortem report (Ex.PW-6/A) have been referred to and quoted above. PW6 in her report dated 25th February, 2010 (Ex.PW-6/C), recorded that this was a case of asphyxia as a result of ante-mortem compression of the neck by a hard and blunt force object. Thus, it was unlikely that the death was suicidal or accidental. Reference was made to the injuries present on the body. It was further recorded that the said injuries were ante-mortem in nature.

10. The appellant was arrested on 3rd April, 2010 at 4.00 PM.

11. We have narrated the aforesaid facts and referred to the documents and testimonies in detail as we are convinced that this is a case of homicidal death and not of accidental injuries causing death or a case of suicide. PW6 in her cross examination categorically stated that the injuries on the neck could not have been caused by any thread, *chunni*, *saari* or a *mangalsutra*. She affirmatively denied that Dimple could have died by pulling of a thread. We do not see any reason to disbelieve and disregard the said opinion of Dr. Meghali

(PW6). On the other hand, we have no hesitation in observing that in the facts of the present case, a deliberate and concerted attempt it is apparent was made not to register the FIR, conduct prompt investigation, and to collect relevant material and evidence. This aspect cannot be ignored or washed away, though we accept that in the absence of conclusive proof to show involvement of the appellant, he would be entitled to benefit of doubt.

12. This brings us to the testimony of Dharampal Singh (PW2), father of the deceased Dimple. He had stated that his daughter got married to the appellant on 14th February, 1999 and had normal married life for about nine years and six months. Acute marital discord surfaced about six months prior to the occurrence, when the appellant Pawan Singh transcended into a relationship with Simple. He deposed as to the parentage and details of Simple. The deceased Dimple, it was asserted, had come across a photograph of the appellant and Simple, mark A. Parents of the appellant and his brother Vijay Kumar were confronted, but they disbelieved Dimple and scolded her, on the pretext that the appellant would never indulge in any such act. On 15th September, 2009, PW2 visited Dimple at her matrimonial home and spoke to the appellant's parents and brother. They assured him that nothing wrong would happen and the appellant would not continue to have any relationship with Simple in future. The witness, Dharampal Singh (PW2) was cross-examined on the said photograph. The photograph, it is accepted, shows the appellant and a girl in an attire normally worn at weddings, and wearing garlands. The anguish and pain of Dharampal Singh (PW2) is

perceptible in his testimony, when he referred to the frantic telephone calls made by him to the appellant on 17th September, 2009 between 8 and 9 PM and the fact that he was not permitted and allowed to speak to Dimple on the pretext that she was sleeping. He asserted that Rajpal Singh, brother of PW2 who used to reside near matrimonial home of Dimple, at 3 AM informed him that Dimple was admitted in Guru Teg Bahadur Hospital. Later on, PW2 learnt from Rajpal Singh that Dimple had died at 2.10 AM. They visited the hospital and came to know that that Dimple had died and the after the post-mortem, they performed her last rites in their village. PW2 protested that inspite of having gone to police station Harsh Vihar along with the dead body and a written complaint to Insp. Virender Singh Punia, SHO, PS Harsh Vihar (PW13), no action was taken. Rather they were threatened by the police officers. No FIR was registered. PW2 has referred to numerous complaints to the police including to the Commissioner of Police, to the DCP (North East), to the DCP (Vigilance), etc., but all in vain as there was silence and inaction. Thereafter, PW2 filed an application under Section 156(3) Cr.P.C, marked as Ex.PW-2/B to Ex.PW-2/E, on or about 3rd October, 2009. It was incorrectly and wrongly urged before us on behalf of the appellant that Rajpal Singh, brother of PW2 was not included and mentioned in the list of witnesses in Ex.PW-2/B to Ex.PW-2/E. His name figures as witness No.2 in the list of witnesses. The list also included the record clerk, PS Harsh Vihar, who was required to produce complete record of the complaint dated 18th September, 2009 filed by PW2.

13. Similar allegations have been made by Vikram Singh (PW1), an army personnel and brother of Dimple and brother-in-law of the appellant Pawan. He testified that on 17th September, 2009, he was woken up by his parents after intimation that Dimple was sick and her condition was serious. He referred to the telephone conversation, he had with the appellant Pawan on the said night and how the appellant evaded questions and did not permit him to speak to Dimple on the pretext that she was sleeping. His uncle Rajpal had informed him about the death of Dimple. On 18th September, 2009, that he along with his parents went to the GTB Hospital but the appellant and his family members were not present. Dimple's dead body was in the hospital. He had identified the dead body. It is noticeable that the police did not record the statement of PW1 under Section 161 Cr.P.C., and what was recorded was identification of the dead body by him, and the only document signed by PW1 was the identification memo (Ex.PW-1/A). He reiterated that his father had made a complaint to the police on 18th September, 2009. He has also deposed that Simple was daughter of Kamal Kumar, who was married to his father's elder brother (Late) Gajender.

14. The aforesaid evidence is cogent, clear and trustworthy and there is no ground or reason to disbelieve or disregard the same. It gets corroboration and support from the medical evidence. What is shocking and deprecatory is the procrastination and lackadaisical approach of the investigating agency throughout. The death of Dimple was in highly suspicious or rather in supine circumstances indicating involvement of the appellant, which were ignobly ignored

and disregarded. Dharampal Singh (PW2) had made written complaints after his oral prayers remained unattended. Even the written complaints remained abegging, compelling the broken father to approach the Metropolitan Magistrate by way of a written complaint. Even thereafter, the investigating agency adopted a rather casual and indifferent approach. Consequently, it is apparent that some relevant evidence dissipated and got lost, to the advantage and benefit of the appellant. In the impugned judgment, the investigation and the conduct of the police officers concerned has been deprecated with adverse comments. The conduct of the investigation and the aforesaid lapses were required to be examined by the Deputy Commissioner of Police (North East) as per the directions made in paragraph No.46 of the impugned judgment by which copy of the said judgment was forwarded to him for information and necessary action against the defaulting officers.

15. Role of police in investigation is imminent and a prominent bedrock in the criminal adjudication system. Ineffective and indifferent investigation as a result of acts of omission or commission, deliberate or otherwise, by the Investigating Officers is unacceptable. The question, whether or not any lapse in investigation is a mere irregularity which would not result in acquittal, or an illegality which would adversely affect the case of the prosecution, have confounded the Courts. The answer depends upon several factors, the primary being whether prejudice is caused to the accused. *Dayal Singh versus State of Uttranchal* (2012) 8 SCC 263, contains discussion on the said aspects in the following words:

“19. Now, we will deal with the question of defective or improper investigation resulting from the acts of omission and/or commission, deliberate or otherwise, of the investigating officer or other material witnesses, who are obliged to perform certain duties in discharge of their functions and then to examine its effects. In order to examine this aspect in conformity with the rule of law and keeping in mind the basic principles of criminal jurisprudence, and the questions framed by us at the very outset of this judgment, the following points need consideration:

- (i) Whether there have been acts of omission and commission which have resulted in improper or defective investigation.
- (ii) Whether such default and/or acts of omission and commission have adversely affected the case of the prosecution.
- (iii) Whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case.
- (iv) If the dereliction of duty and omission to perform was deliberate, then is it obligatory upon the court to pass appropriate directions including directions in regard to taking of penal or other civil action against such officer/witness.

20. In order to answer these determinative parameters, the courts would have to examine the prosecution evidence in its entirety, especially when a specific reference to the defective or irresponsible investigation is noticed in the light of the facts and circumstances of a given case.”

The Supreme Court also referred to the earlier pronouncements which throw light on the said aspect in the following words:

“27. Now, we may advert to the duty of the court in such cases. In *Sathi Prasad v. State of U.P.* [(1972) 3 SCC 613 : 1972 SCC (Cri) 659] this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in *Dhanaj Singh v. State of Punjab* [(2004) 3 SCC 654 : 2004 SCC (Cri) 851] , held: (SCC p. 657, para 5)

“5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

28. Dealing with the cases of omission and commission, the Court in *Paras Yadav v. State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104 : AIR 1999 SC 644] enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined *dehors* such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

29. In *Zahira Habibullah Sheikh (5) v. State of Gujarat* [(2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] , the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42)

“42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play.”

16. In *Hema versus State* (2013) 10 SCC 192, the Supreme Court analysed the law on the subject and reiterated that if the evidence adduced is reliable, the contaminated conduct of the police officers and the defective investigation would not entitle an accused to be acquitted, observing:

“14. It is also settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In *C. Muniappan v. State of T.N.* [(2010) 9 SCC 567], the following discussion and conclusions are relevant which are as follows: (SCC p. 589, para 55)

“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.”

15. In *Dayal Singh v. State of Uttaranchal* [(2012) 8 SCC 263], while reiterating the principles rendered in *C. Muniappan*[(2010) 9 SCC 567] , this Court held thus: (*Dayal Singh* case [(2012) 8 SCC 263] , SCC p. 276, para 18)

“18. ... Merely because PW 3 and PW 6 have failed to perform their duties in accordance with the

requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground.”

16. In *Gajoo v. State of Uttarakhand* [(2012) 9 SCC 532], while reiterating the same principle again, this Court held that: (SCC p. 540, para 19)

“19. ... A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court.”

17. Since, the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases: (*Gajoo case* [(2012) 9 SCC 532], SCC pp. 540-44, para 20)

“20. In regard to defective investigation, this Court in *Dayal Singh v. State of Uttaranchal* [(2012) 8 SCC 263] while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 280-83, paras 27-36)”

xxx”

17. A Division Bench of this Court of which one of us (Sanjiv Khanna, J.) was a member, in *Crl. Appeal No.605/2013*, titled ***Sudhir Kumar versus State***, decided on 2nd September, 2013, has held that when it is apparent that certain factual aspects have been held back and have not been brought on record creating grave suspicion, the Court must examine whether the lack of or improper investigation has resulted in incompleteness or uncertainty. If the investigation leave a number of queries unanswered and creates confusion, or ambiguity, conviction should not be ordered/sustained. However, in every case of defective investigation, an accused cannot be acquitted, if the

reliable evidence produced, *dehors* the defective investigation, is sufficient to bring home the guilt of the accused beyond all reasonable doubts. In such matters, the accused cannot take advantage of defective investigation unless the 'defective investigation' causes reasonable doubt about the prosecution case. In the present case, defective investigation has resulted in disappearance and loss of evidence. It would not negate and erase the evidence and material filed and relied upon by us. No prejudice and injustice is suffered by the appellant. The defective investigation it is apparent was at the behest and to help the appellant.

18. We, have therefore, proceeded to examine the evidence on record and held that it has been established that the appellant-Pawan had committed the offence. The evidence on record discussed above establishes the following position:

- A. The deceased Dimple was in her matrimonial home in the night intervening 17th and 18th September, 2009.
- B. As per the testimony of Dharampal (PW2) which should be accepted, Dimple had got married to the appellant on 14th February, 1999 and for last six months prior to the incident was passing through a phase full of turbulence and turmoil. The reason being an extra-marital relationship and possibly marriage of the appellant Pawan with Simple.
- C. On 17th September, 2009, repeated attempts were made by Vikram Singh (PW1) and Dharampal Singh (PW2) to speak to Dimple at her matrimonial house but without success. PW1

spoke to the in-laws of Dimple and also the appellant accused on the said night and the appellant informed that Dimple was alright and had slept after taking dining. Dharampal Singh (PW2) had also spoken to the appellant between 8 and 9 PM, and wanted to speak to Dimple, but was told that she was sleeping. The appellant had asserted that he would ask Dimple to call him in the morning.

D. Depositions of Vikram Singh (PW1) and Dharampal Singh (PW2) establish and prove that the appellant was present at home, and did not allow them to speak with deceased Dimple.

E. About 3 AM in the intervening night, Dharampal Singh (PW2) came to know that Dimple had been admitted in the Guru Teg Bahadur Hospital and subsequently informed that Dimple had died at about 2.10 AM. Vikram Singh (PW1) had deposed on similar lines. PW1 and PW2 thereafter came to Delhi on 18th September, 2009 and reached GTB Hospital. Dimple had died by then and post-mortem was conducted and they cremated Dimple.

F. The MLC of Dimple (Ex.PW-11/A) records that she was brought to GTB hospital at 2.10 AM in an unconscious state without any recordable blood pressure, pulse rate, and dilated pupil with no cardiac and respiratory activity. She was declared brought dead. The MLC records that she was brought to the hospital by her husband.

G. The post mortem reports, Ex.PW-6/A, Ex.PW-6/B and Ex.PW-6/C by Dr. Meghali (PW6) opine that Dimple had died as a result of asphyxia as a result of compression of neck by hard and blunt object. There were also physical injuries on the body. Accidental or suicidal death stands ruled out. The injuries were anti mortem in nature (see Ex.PW-6/B and Ex.PW-6/C). Thus, there is clear and affirmative evidence of physical violence and injuries suffered by the deceased. The viscera report rules out poisoning.

19. The aforesaid circumstances when read with Section 106 of the Evidence Act, would complete the chain implicating and proving beyond doubt that the appellant alone was the perpetrator of the aforesaid offence and is guilty of murder. The unnatural and homicidal death of Dimple had taken place in confines of her matrimonial home. In such cases when the prosecution establishes and discharges the initial burden that the offence was committed in the house and the accused was present at that time, the explanation of the accused as to how and why the occurrence took place assumes significance and is important. Accused then cannot keep quiet or offer no explanation meeting the incriminating material. When presence of an accused/appellant at the time of homicidal death is established and proved beyond doubt, the principle enshrined in section 106 of the Evidence Act, 1872 impels and requires an explanation from the accused/appellant as to the cause and the reason for the injury that caused loss of life. When no such explanation is forthcoming or explanation is found to be untrue, the said fact

becomes an additional link in the chain of circumstances making it complete (See *Trimukh Maroti Kirkan versus State of Maharashtra* (2006) 10 SCC 681 and other cases mentioned therein). In *Nika Ram versus State of H.P.* (1972) 2 SCC 80, the Supreme Court upheld the conviction as it was proved that the accused was with his wife in the house when she was murdered with a weapon and that the relationship between the accused and his wife was strained. The aforesaid reason coupled with absence of any cogent explanation, it was held, establishes the guilt (See also, *Ganeshlal versus State of Maharashtra* (1992) 3 SCC 106, *State of U.P. versus Dr. Ravindra Prakash Mittal* (1992) 3 SCC 300, and *State of Tamil Nadu versus Rajendran* (1999) 8 SCC 679).

20. When we turn to the statement of the appellant under Section 313 Cr.P.C, in the present case, it is apparent that the appellant accepts that he was married to Dimple but had denied his presence in the house on 17th September, 2009. The appellant accepts that in the night of 17th September, 2009, between 8 and 9 PM, Dharampal Singh (PW2) had spoken to him. He, however, claimed that he was not at home and stated him that he would call PW2 later so that he could speak to Dimple. The appellant also accepts that his father Chaman Singh had gone to the house of Raj Pal Singh, brother of Dharam Pal Singh at 3 AM and told him that Dimple was admitted to GTB Hospital. He further accepts that at 2.10 AM Dimple was admitted to GTB Hospital and examined by Dr. Satish Chandra (PW11) who declared that she was brought dead. Appellant claimed that he had taken Dimple to the hospital but what is conspicuous and

absent and not forthcoming in the explanation are details of the place/location where he was, 8 PM onwards on 17th September, 2010. There is no explanation on the said crucial aspect. Nothing has been stated. PW2 and PW1 have deposed as to the appellant's presence in the house. This was also normal and natural. The appellant did not state how and for what reason Dimple had suffered physical injuries and died due to asphyxia. On the other hand, the appellant claimed that Dharampal (PW2), father of Dimple had demanded Rs.10 lakhs which he refused to pay and therefore the FIR was not registered immediately. Dharampal (PW2) kept on negotiating with him and his family and when they declined to pay, he got the case registered against him though he was innocent.

21. Learned counsel for the appellant submitted that though the appellant had remained silent, Sanjay Tyagi, a neighbour (PW5), had elucidated the reason and cause of death. We have examined his testimony but regret our inability to accept the said contention. PW5 deposed that he was residing as a tenant and Chaman Singh, father of the appellant, was his landlord. He knew the appellant, his deceased wife Dimple and their children. On the fateful day, he returned to the tenanted accommodation in the evening at about 6-7 PM from Meerut, Uttar Pradesh. He had then received a call from father of Dimple who had claimed that Dimple was sick and he wanted to talk to her. He had promised that he would go back in the evening and make him speak to Dimple. In the evening, he spoke to the mother of appellant and had asked whether Dimple was sick. He was informed that Dimple was suffering from low blood pressure. At about 8-9

PM, he heard noise and on enquiry learnt that children of Dimple had pulled her *mangalsutra* and one black thread which Dimple was wearing. As a result, Dimple became unconscious. Thereafter, he along with Chaman Singh and some others took Dimple to a nursing home at Mandoli and Raj Pal, uncle of Dimple who was residing in Mandoli was called. Appellant Pawan was also called by his father. At about 11-12 PM, doctors at the Nursing Home suggested that Dimple should be taken to GTB Hospital. When taken to GTB Hospital, she was declared brought dead.

22. There is no evidence or material whatsoever to suggest that deceased Dimple was taken to the Nursing Home at 9-10 PM on 17th /18th September, 2009. This fact is not stated by the appellant in his statement under Section 313, Cr.P.C. There is time gap between 11-12 PM and 2.10 AM, when allegedly on the advise of Doctors of the nursing home, Dimple was taken to GTB Hospital. In fact, as per the MLC (Ex.PW-11/A), Dimple was brought to GTB Hospital at 2.10 AM. Further, PW5's testimony that Raj Pal, uncle of Dimple was called immediately after 8-9 PM is incorrect and contrary to the depositions by Dharampal (PW2) and Vikram (PW1). The appellant Pawan in his statement under Section 313 Cr.P.C has stated that Rajpal came to GTB hospital at 3 AM. The medical reports (Ex.PW-11/A, B and C) and the testimony of Dr. Satish Chandra (PW11) are to the contrary, as medical reports opine that the cause of death was asphyxia due to strangulation by a hard and blunt object. It is not possible to accept that the children could have pulled *mangalsutra* or black thread resulting in Dimple's death. Testimony of Vikram Singh

(PW1) and Dharampal Singh (PW2) are lucid and unequivocal on their attempts to speak to Dimple at night on 17th September, 2009, but without success. It is unbelievable and unacceptable that PW2 would have spoken to Sanjay Tyagi (PW5) instead of a direct call at the residence and to the appellant to speak to Dimple. Desire and attempt of Dharam Pal (PW2), the father, to speak to Dimple is accepted by Sanjay Tyagi (PW5). Moreover, Sanjay Tyagi (PW5) in his statement accepted his cordial relations with the appellant Pawan and that he was still residing as a tenant in the house of Chaman Lal with whom he used to meet.

23. Sanjay Tyagi (PW5) had stated that the appellant had come directly at the Nursing Home at 9-10 PM. This discrete statement must be rejected and disbelieved, in the absence of medical papers from any Nursing Home and more importantly the time gap between 9-10 PM and when the deceased Dimple was taken and examined at GTB Hospital i.e. at 2.10 AM at night. This part of his testimony is contemptible and unacceptable. It was made to exculpate the appellant and should not be believed.

24. It was argued that the children of appellant and deceased Dimple have not deposed as witnesses. This is correct. However, the said children were very young and between the age of 10-12 years as per the deposition of Sanjay Tyagi (PW5). He accepted that the said children were residing with Chaman Singh, i.e. father of Pawan, after the occurrence. We have already referred to lapses of the prosecution and do not think in the present facts absence or failure to examine the

two children would be fatal. We have also referred to the statement of the appellant under Section 313 Cr.P.C.

25. Similarly, the contention of the appellant that Raj Pal was not examined would not constitute illegality, impelling benefit of doubt. As per the testimony of Dharam Pal (PW2), Raj Pal his brother had informed him at about 3 AM that the deceased Dimple was admitted to GTB Hospital. The appellant in his statement under Section 313, Cr.P.C accepted as correct that Chaman Singh had visited Raj Pal brother of Dharam Pal (PW2) to inform that Dimple was in the hospital. Therefore, examination of Raj Pal who as such was not an eye witness to the actual occurrence is irrelevant and inconsequential. His deposition would have been relevant to establish surrounding circumstances post the act of violence, which has been deposed to by others and an accepted position. They are not in debate.

26. The contention of the appellant that the inquest report (Ex.PW-10/A and Ex.PW-10/B) and the MLC (Ex.PW-11/A) do not mention or record any injury on the neck, is not baffling or enigmatic. We have commented about the investigation. The post mortem report (Ex.PW-6/A), the testimony of Dr. Meghali and her subsequent report, Ex.PW-6/B and C, are clear and categorical on the cause of death. PW6 had taken due care and caution before giving her reports. It was only after post mortem examination and viscera report that the cause of death was finally confirmed. Absence or failure to mention about the injuries on the neck in the MLC(Ex.PW-11/A) is reflective of failure to record the said aspect. Neck injuries are not debatable and should be accepted. The post mortem report (Ex.PW-6/A) records the

injuries as noted in paragraph 5 above. These were ante mortem in nature and asphyxia as the cause of death is not questioned and challenged. Failure to record the said facts is reflective on the investigation.

27. Challenging the post mortem report and the opinion (Ex.PW-6/A, B and C) and the testimony of Dr. Meghali (PW6), the appellant's counsel has relied upon judgment in *Mayur Panabhai Shah versus State of Gujarat* AIR 1983 SCC 66. We have examined the said judgment passed on an appeal filed by the accused. The Supreme Court has observed that the learned Judge had erred and was wrong in observing that the courts have always taken doctors as witnesses of truth. It was held that testimony of a doctor is like depositions by any other witness. There exists no irrebuttable presumption as to testimony of any witness. The said judgment, therefore, does not support the contention of the appellant.

28. In the written submission filed by the counsel for the appellant, reference has been made to pages 451 - 453 of the textbook, *Medical Jurisprudence and Toxicology* by Modi, 24th Edition. The said pages contain a write up on strangulation, defined as compression of the neck by force other than hanging; elucidates on when death results from constriction of neck by means of a ligature or any other mean by suspending body; when such constriction is by pressure of finger or palms upon the throat, it is called throttling and when strangulation is caused by compression of throat or some other solid substance, it is called as mugging. The text reinforces that sometimes strangulation can be also done by using a strong bamboo or lathi. The appearance

of the neck, it has been explained would vary depending upon the means adopted and used. In the present case, there was no ligature mark. Modi's textbook on *Medical Jurisprudence and Toxicology* accepts that no inference should be drawn simply from absence of ligature mark because it may be indistinct or absent.

29. As per the post mortem report (Ex. PW6/A) on detailed examination Reddish brown dry hand panchmentised abrasion, measuring 5 X 1.5 cm horizontally placed on front of the neck in midline 7 cm above suprasternal notch over lying thyroid cartilage. On fine dissection, the skin and subcutaneous tissue above and below it were found markedly congested. On further dissection, extravasation of blood was seen in soft tissue on both sides of neck more on right side. Bruising of neck muscles was also seen. Thyroid, hyoid and laryngeal apparatus were intact.

30. The opinions given by Dr. Meghali (PW6) in her reports (Ex. PW6/B & C) are affirmative and categorical as to the cause of death. The fact that autopsy did not find fracture of the hyoid bone does not prove that the death was not due to strangulation, though existence of such fracture does lead to conclusive proof. The said position stands elucidated and accepted in *Ponnusamy vs. State of Tamil Nadu* (2008) 5 SCC 587, wherein the following portion from Taylor's Principles and Practice of Medical Jurisprudence, 13th Edn., at pages 307 and 308 were reproduced:

“23. It is true that the autopsy surgeon, PW 17, did not find any fracture on the hyoid bone. Existence of such a fracture leads to a conclusive proof of strangulation but absence thereof does not prove the contra. In *Taylor's*

Principles and Practice of Medical Jurisprudence, 13th Edn., pp. 307-08, it is stated:

‘The hyoid bone is “U” shaped and composed of five parts: the body, two greater and two lesser horns. It is relatively protected, lying at the root of the tongue where the body is difficult to feel. The greater horn, which can be felt more easily, lies behind the front part of the strip muscles (sternomastoid), 3 cm below the angle of the lower jaw and 1.5 cm from the midline. The bone ossifies from six centres, a pair for the body and one for each horn. The greater horns are, in early life, connected to the body by cartilage but after middle life they are usually united by bone. The lesser horns are situated close to the junction of the greater horns in the body. They are connected to the body of the bone by fibrous tissue and occasionally to the greater horns by synovial joints which usually persist throughout life but occasionally become ankylosed.

Our own findings suggest that although the hardening of the bone is related to age there can be considerable variation and elderly people sometimes show only slight ossification.

From the above consideration of the anatomy it will be appreciated that while injuries to the body are unlikely, a grip high up on the neck may readily produce fractures of the greater horns. Sometimes it would appear that the local pressure from the thumb causes a fracture on one side only. While the amount of force in manual strangulation would often appear to be greatly in excess of that required to cause death, the application of such force, as evidenced by extensive external and soft tissue injuries, make it unusual to find fractures of the hyoid bone in a person under the age of 40 years.

As stated, even in older people in which ossification is incomplete, considerable violence may leave this bone intact. This view is confirmed by Green. He gives interesting figures: in 34 cases of manual strangulation the hyoid was fractured in 12 (35%) as compared with the classic paper of Gonzales who reported four fractures in 24 cases. The figures in strangulation by ligature show that the percentage of hyoid fractures was 13. Our own figures are similar to those of Green.”

31. The medical opinion on the said aspect was also examined in the case of *Ravirala Laxmaiah vs. State of Andhra Pradesh* (2013) 9 SCC 283, wherein the view expressed in *Ponnusamy (supra)* was reiterated and the following quotation from the Journal of Forensic Sciences, Volume 41, under the title – Fracture of Hyoid Bone in Strangulation: Comparison of Fractured and Unfractured Hyoids from Victim of Strangulation, was reproduced:-

“24. In *Journal of Forensic Sciences*, Vol. 41 under the title — Fracture of the Hyoid Bone in Strangulation: Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:

‘The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, post-mortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone. We compared the case profiles and xeroradiographic appearance of the hyoids of 20 victims of homicidal strangulation with and without hyoid fracture (n = 10, each). The fractured hyoids occurred in older victims of strangulation (39 ± 14 years) when compared to the victims with unfractured hyoids (30 ± 10 years). The age dependency of hyoid fracture correlated with the degree of ossification or fusion of the hyoid synchondroses. The hyoid was fused in older victims of strangulation (41 ± 12 years) whereas the unfused hyoids were found in the younger victims (28 ± 10 years). In addition, the hyoid bone was ossified or fused in 70% of all fractured hyoids, but, only 30% of the unfractured hyoids were fused. The shape of the hyoid bone was also found to differentiate fractured and unfractured hyoids. Fractured hyoids were longer in the anterior-posterior plane and were more steeply sloping when compared with

unfractured hyoids. These data indicate that hyoids of strangulation victims, with and without fracture, are distinguished by various indices of shape and rigidity. On this basis, it may be possible to explain why some victims of strangulation do not have fractured hyoid bones.”

In the said case, reference was made to Modi’s Medical Jurisprudence and Toxicology, 23rd Edition and it was also contended on behalf of the accused that the post mortem was completely silent about the ligature mark and its characteristics. The contention being that in the said case, it was not proved or established that the deceased has died of homicidal strangulation or throttling. The Supreme Court in *Ravirala Laxaiah (supra)* rejected the said contention while concurring with the decision in *Ponnusamy (supra)* and upheld the conviction.

32. In view of the aforesaid discussion, we affirm the findings of the Trial Court. We do not find any merit in the present appeal and the same is dismissed. Conviction and sentence of appellant Pawan is upheld and sustained. Trial Court record will be sent back.

(SANJIV KHANNA)
JUDGE

(ASHUTOSH KUMAR)
JUDGE

February 4th, 2015
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