

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No. 1133-DB of 2011

Date of Decision: November 30 , 2016.

Anil Kumar Appellant

Versus

State of Haryana Respondent

**CORAM:- HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Baldev Singh Badhran, Advocate and
Mr. Pushpinder Dalal, Advocate for the appellant.

Mr. Surender Singh Pannu, DAG, Haryana, for the State.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been filed by the appellant–Anil Kumar, impugning the judgment of conviction dated 14.10.2011 and order of sentence dated 19.10.2011 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri. The appellant has been convicted for the offences punishable under Sections 302/201 Indian Penal Code (IPC – for short) for committing the murder of his wife Kalawati @ Usha and then

throwing her dead body in the western Yamuna canal. The appellant has been sentenced as under:-

<i>Sentence u/s</i>	<i>Quantum of sentence</i>
302 IPC	to undergo imprisonment for life and to pay a fine of ₹3,000/- and in default thereof to further undergo simple imprisonment for two months
201 IPC	to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹3,000/-, in default of payment of fine, to further undergo simple imprisonment for two months.

The sentences were ordered to run concurrently.

Brief facts of the case are that the complainant Balbir Singh (PW19) received a telephone call on 29.08.2006 at 9.00 p.m. from his brother-in-law Puran Chand (PW13) resident of village Ganoli. Puran Chand (husband of another sister of Balbir Singh and co-brother-in-law ('Saddu) of the appellant informed the complainant that the complainant's sister Kalawati @ Usha (deceased in this case) was missing from her home since the morning of 29.8.2006. The complainant alongwith his uncle Shri Chand went to the house of his sister at Buria Chungi where they met the appellant – Anil Kumar and Subhash son of Jaipal Dhiman (Jaipal Dhiman is the maternal uncle of the appellant). They made inquiries about the whereabouts of Kalawati @ Usha. Efforts were made by the complainant to search for his sister which however remained unfruitful. A report regarding missing of Kalawati @ Usha was lodged by the complainant on 02.09.2006 at Police Post Buria Chungi. In the meanwhile, it was intimated by Rati Ram, Chowkidar of village Amadalpur on 1.9.2006 vide his statement Ex.P7, that a dead body of an unknown lady in a decomposed state was

lying entangled with a poplar tree in the Yamuna Canal. Rati Ram was informed about the dead body by an unknown passer-by at the canal bridge Amadalpur when he was walking towards village Mukarampur from his village. The dead body was spotted by the passer-by when he was coming from the East-track of the canal. Rati Ram conveyed this information in his village. A number of villagers accompanied him to the spot and found the dead body of an unknown woman. The dead body could not be identified by the villagers as it was in a highly decomposed state. After discussing the matter with the villagers, a telephone call was made to Police Station Buria. PW8 Rati Ram thereafter proceeded towards the Police Station and on the way he met SI Baldev Singh (PW6) near the tubewell of Shish Pal. Baldev Singh SI was on patrol duty in the area of Amadalpur. PW6, SI Baldev Singh proceeded towards the canal where the dead body was lying. The dead body was brought out from the canal. Photographs of the dead body were taken. The complainant Balbir Singh, appellant Anil Kumar were present along with a number of other persons at the time of recovery of the dead body. The dead body was sent to Civil Hospital, Jagadhri, for post-mortem examination along with an application (Ex.P8). Inquest proceedings were conducted and the Inquest Report (Ex.P9) was prepared.

Statements of Rati Ram and Kadam Singh son of Sarup Singh were recorded under Section 175 of the Code of Criminal Procedure (Cr.P.C – for short). In the Inquest Report (Ex.P9) it is inter alia recorded that the appellant-Anil Kumar, the complainant Balbir Singh son of Daya Nand

along with other persons were present at the time of recovery of the decomposed body. It is noted that the above said persons along with other seven persons named therein had informed that Usha Rani wife of Anil Kumar had left her matrimonial home four-five days earlier without informing anyone. They had come to know that a dead body of an unknown woman was found lying in a decomposed condition in the Western Yamuna canal near Amadapur. They proceeded to the spot on receipt of this information and saw the dead body of the woman lying entangled in the water. After seeing the dead body it was stated that the dead body was not of Usha Rani wife of Anil Kumar. The report regarding missing of Usha Rani was lodged by the complainant-Balbir Singh on the next day i.e. 2.9.2006 at Police Post Buria Chungi.

The post-mortem of the decomposed body recovered on 1.9.2006 was conducted on 3.9.2006 by Dr. Vijay Pal Khanagwal PW17. The following injuries were found on the dead body :-

- (1)A diffuse reddish contusion of size 9x6 cm over the top of head, being situated along with sagittal plane. On dissection, the layers of the scalp were ecchymosed with infiltration of blood in the pericranium. On dissection of cranium, the duramater was found to be intact and the brain matter was liquefied and consisted of bloody pasty material.
- (2)A diffuse reddish contusion of size 6x4 cm over the right parieto-occipital region in oblique direction. On dissection, the layers of

the scalp showed ecchymosed along with infiltration of blood in the pericranium. The brain matter was bloody paste like as described under injury no.(1).

(3)A diffuse reddish contusion of size 7x4 cm over the left frontal region of scalp situated 5 cm above the supraorbital margin in oblique direction along the saggital plane. On dissection, the underlying tissues were ecchymosed along with infiltration of blood in the pericranium. The duramater was intact and the brain matter was liquefied and consisted of bloody paste like material.

The dead body was opined to be that of a female aged 30-40 years. The cause of death was not specified and was kept pending till the report of the diatom test of clavicle and sternum. The probable time that elapsed between death and autopsy was opined between 5-7 days.

Subsequently an application dated 23.09.2006 (Ex.P15) was submitted by the complainant Balbir Singh before the SHO Police Station City Jagadhri. It was stated by the complainant that his sister Kalawati @ Usha was married with the appellant – Anil Kumar about 17/18 years earlier to the date of occurrence. Two sons were born out of this wedlock. The appellant is stated to be a drunkard who remained under the influence of liquor throughout the day and did not do any work. Due to this reason the complainant's sister (deceased) and the appellant Anil Kumar did not get along. Anil Kumar kept demanding money from time to time and the complainant used to fulfill his demands. That year itself a Lathe machine

worth ₹70,000/- was purchased by the complainant and given to the appellant. However, the appellant at the instance of his parents sold that machine after about 15/20 days of its receipt. A telephone call was received on 29.08.2006 at about 9.00 p.m. by the complainant from his brother-in-law Puran Chand informing him i.e. the complainant that Kalawati @ Usha was missing from her matrimonial home since that morning. The complainant alongwith his uncle Shri Chand immediately proceeded to his sister's house at Buria Chungi. They met the appellant – Anil Kumar and Subhash (son of Anil Kumar's maternal uncle) but no satisfactory explanation was forthcoming from the appellant regarding the whereabouts of Kalawati @ Usha. The appellant informed the complainant that his servant Nagara had gone in search of Kalawati @ Usha. The appellant's brother Rajesh came to fetch his mother at about 10/10.30 p.m. from village Bhukeri but they also did not talk about his sister. They did not even sit with the complainant. They chose to sit with Subhash in another room. The complainant and his uncle went in search of Kalawati @ Usha but she could not be traced despite earnest efforts. The complainant met his uncle Sumer Chand (Mansa) on 30.08.2006 at Buria Chungi at his shop. Sumer Chand enquired about his sister and the complainant informed him that she was missing. Sumer Chand then revealed that there remained a dispute between the appellant and the deceased for a number of months. Due to this reason she had put an end to her life. The complainant yet again proceeded to the house of Subhash (son of appellant's maternal uncle). Subhash often used

to stay at the house of Kalawati @ Usha. Subhash on inquiry stated that they had carried out the act which they were required to and the complainant could do whatever he wanted against them. The complainant kept searching for his sister in the surrounding areas and made inquiries from his relatives but she could not be traced. A dead-body of a woman in a decomposed state was recovered by the Police on 01.09.2006 near Madalpur bridge. It is stated that the appellant – Anil Kumar at the first instance identified the dead-body to be that of Kalawati @ Usha. His servant also identified the dead-body to be that of Kalawati @ Usha. However, the appellant subsequently refused to identify the dead-body at the instance of someone. The complainant was thus confident that his sister Kalawati @ Usha had been killed by appellant Anil Kumar, the appellant's brother Rajesh, their mother Luxmi Devi, Subhash (son of Anil Kumar's maternal uncle) and Sumer Chand or she had been kept concealed at some place with an intention to kill her. The complainant stated that a report regarding missing of Kalawati @ Usha was also lodged by him on 02.09.2006. Till the time of submission of the said application, the Panchayat had kept assuring the complainant that true facts would come out and it kept asking for time. However, now he prayed for legal action to be taken against the accused persons and also taking steps to trace out his sister. On the basis of the above said application, FIR No.411 (Ex.P5) was registered on 23.09.2006 under Sections 364, 34 IPC against the appellant Anil Kumar, his father Sumer Chand (accused No.1), Rajesh Kumar son of Sumer Chand (Accused

No. 3), Subhash Chand son of Jaipal (Accused No.4).

The diatom test of clavicle and sternum and the water sample (Ex.P28), the report of vaginal swab and smear vide report of Forensic Science Laboratory, Madhuban (Karnal) dated 5.11.2007 (Ex.P25) as well as the report of Centre for DNA Fingerprinting and Diagnostics, Hyderabad, dated 10.9.2008 (Ex.P27) were submitted vide Memo Ex.P24 before Dr. Vijay Pal Khanagwal on 10.1.2009 to seek his opinion regarding the cause of death. As per the DNA Report (Ex.P27) the dead body was identified to be that of Kalawati @ Usha. The opinion regarding the cause of death was given by Dr. Vijay Pal Khanagwal on 18.1.2009 itself vide Ex.P26. The cause of death was opined to be head injuries which were ante-mortem in nature caused by hard and blunt object (s), homicidal in manner and sufficient to cause death in the ordinary course of nature. It was further opined that as per the Report of the vaginal swab and smear there was indication of sexual intercourse with the deceased.

After receipt of the report of the DNA test and the opinion of the Doctor regarding the cause of death, offences punishable under Sections 302, 201 and 376 IPC were added. Accused No.3 Rajesh Kumar was arrested on 6.8.2009 and he suffered a disclosure statement (Ex.P17) to the effect that Anil Kumar inflicted a brick bat blow on the head of his wife Kalawati @ Usha due to which she died. Thereafter, all the accused got scared and put her dead body in a gunny bag and transported it on a three-wheeler to the bridge of the canal near village Amadalpur. They took the

shirt off the dead body and threw it into the canal. He could point out the place where the dead body and its shirt were thrown in the canal. The appellant Anil Kumar and accused No.1 Sumer Chand were arrested on 6.8.2009. Anil Kumar suffered a disclosure statement (Ex.P23) giving a similar version. Sumer Chand suffered a disclosure statement (Ex.P24) recounting the same facts. In pursuance to the disclosure statements the accused led the police party to the place where they had thrown the dead body. The accused Luxmi Devi was found to be innocent during investigation.

The final report/'challan' under Section 173 Cr.P.C. was presented on completion of the investigation against the appellant-Anil Kumar, Rajesh Kumar and Sumer Chand. The case was committed to the court of Sessions vide order dated 15.9.2009. The accused Subhash was arrested subsequently on 10.10.2009. He also suffered a disclosure statement similar to the one suffered by the other accused. Supplementary 'challan'/police report was presented against him and the same was also committed to the court of Sessions on 7.11.2009. Charges were framed against all the four accused for the offences punishable under Sections 302, 201 read with Section 34 IPC on 27.11.2009. All the accused pleaded not guilty and claimed trial.

The prosecution examined as many as 23 witnesses to prove its case. All the accused while denying the incriminating evidence and material put to them claimed false implication and innocence. Sumer Chand and

Rajesh Kumar specifically pleaded that they resided separately in the village. They were not present at Jagadhri on the date of the alleged occurrence. The accused Subhash pleaded that he had met with an accident on 8.8.2006 in which he suffered fracture of both the bones of his right leg. He was admitted at Kohli Hospital Jagadhri and remained admitted there till 18.8.2006. A rod was inserted in his leg and he was advised complete bed rest from 18.8.2006 till 18.10.2006. The appellant Anil Kumar while pleading innocence stated that he had been falsely implicated at the behest of his in-laws. He never suffered any disclosure statement nor confessed his guilt. A false case had been registered against him. Two witnesses DW1 Nikki wife of Ashok and DW2 Dr. Pardeep Kohli were examined in defence.

The learned trial Court on considering the entire facts and circumstances of the case as well as the evidence on record concluded that the prosecution had failed to prove its case against the accused Subhash, Sumer Chand and Rajesh Kumar beyond reasonable doubt. Thus, the above said three accused were acquitted of the charges framed against them. The appellant-Anil Kumar was however convicted for the offence punishable under Sections 302, 201 IPC for having committed the murder of his wife Kalawati @ Usha and thereafter throwing her dead body in the western Yamuna canal with an intent to dissipate the evidence of the commission of offence. It was observed that the prosecution had proved the sequence of events sufficient to prove his guilt. The said events being :-

- “. the deceased Kalawati was missing from the matrimonial home from 29.8.2006;
- her husband Anil Kumar (accused) had not made any report to the police at any point of time. He had also not made any attempt to trace her out;
 - A female dead body was found in decomposed condition near the bridge in Western Yamuna canal within the area of village Amadalpur on 1.9.2006;
 - during police proceedings initially accused Anil Kumar had identified the dead body to be of his wife Kalawati @ Usha and his servants had also identified the dead body but later on he had refused to identify the dead body. This fact is mentioned by PW19 Balbir Singh (Complainant), brother of the deceased in the application Ex.PW15/A upon which the FIR was registered, proved by PW19 Balbir Singh (complainant), brother of the deceased.
 - Deceased Kalawati @ Usha was identified by DNA test during the investigation.
 - Accused Anil Kumar had made the extra judicial confession in panchayat held in Canal Rest House, Anaj Mandi, Radaur in the presence of PW7 Rajinder Singh and PW13 Puran Chand admitting his guilt. Convening of panchayat at Canal Rest House, Radaur has also been proved by PW19 complainant Balbir Singh;

- there is no explanation on behalf of the accused as to how the deceased had disappear from her matrimonial home;
- it emerges from the medical evidence on record that the cause of death in this case was head injuries which were ante-mortem in nature;
- The report of FSL indicates that sexual intercourse was done with the deceased. That also proves that the deceased was with her husband i.e. accused Anil Kumar soon before her missing from the house and before that had sexual intercourse with her; and
- According to FSL report (Ex.P25) diatoms were detected in the water sample. However, diatoms could not be detected in Sternum & Clavicle. Meaning thereby, the dead body of the deceased was thrown in the canal after her murder.”

The appellant was sentenced to undergo imprisonment for life besides pay a fine of ₹3,000/- and in default thereof to further undergo simple imprisonment for two months for the offence punishable under Section 302 IPC. He was also sentenced to undergo rigorous imprisonment for a period of four years besides pay a fine of ₹3,000/-, and in default of payment of fine, to further undergo simple imprisonment for two months for the offence punishable under Section 201 IPC with both the sentences to run concurrently.

Aggrieved from his conviction and sentence vide the impugned judgment and order dated 14.10.2011/19.10.2011, this appeal has been preferred by Anil Kumar.

Learned counsel for the appellant submits that the learned trial Court has grossly erred in convicting the appellant for the offence punishable under Section 302 IPC. It is contended that the appellant Anil Kumar was married to the deceased Kalawati @ Usha about 18-19 years prior to the alleged incident. The appellant and his wife had two children and there is no evidence of any ill treatment being meted out to the deceased. The case is based entirely on circumstantial evidence which does not in any manner connect the appellant with the offence in question. The deceased had left the matrimonial home of her own accord. Intimation of this fact had been conveyed to the complainant on the said day itself i.e. 29.8.2006. The complainant had come to the appellant's house on 30.8.2006. A highly decomposed dead body of a female was discovered on 1.9.2006. Despite the complainant being present at the time of recovery of the dead body himself, the dead body was not identified by him. So much so that a missing report regarding the deceased Kalawati @ Usha was admittedly lodged by the complainant on 2.9.2006. It is at a belated stage i.e. after 26 days that an application (Ex.P15) was submitted by the complainant. This application is a clear after thought and a result of a well thought out concoction. Learned counsel for the appellant further submits that the appellant is sought to be connected with the offence in question on the basis of his extra-judicial confession which is impermissible. No

complaint in the 18 years of marriage was ever made by the deceased or her family members regarding the behaviour of the appellant or in respect to any cruelty whatsoever allegedly meted out to the deceased. It is submitted that the so called extra-judicial confession made before Balbir Singh Hooda PW21 cannot be relied upon as Balbir Singh Hooda has not supported the prosecution case. Similarly, reliance on the statement of Rajinder Singh, Sarpanch of village Bapoli (PW7) is misplaced. Furthermore, the complainant Balbir Singh in his cross-examination has stated that his sister and brother-in-law (appellant) had cordial relations and his sister was a patient of depression. She had left the matrimonial home on earlier occasions as well without informing her husband or other family members. Therefore, the ingredients which are essential for the conviction of an accused on the basis of circumstantial evidence are completely lacking in this case. The link in the chain of events pointing solely to the guilt of the accused is not complete. It is thus prayed that the impugned judgment and order be set aside thereby acquitting the appellant of the charges against him.

Learned counsel for the State while refuting the above said arguments submits that the prosecution has led clear and cogent evidence to prove the guilt of the appellant. There is ample evidence on record to sustain the conviction and sentence imposed upon the appellant. It is submitted that the conduct of the appellant proves his complicity in commission of the offence. No efforts were made by the appellant to trace out his wife. He did not lodge any report regarding his wife being missing

since 29.9.2009. The motive for murdering Kalawati @ Usha is clear from the statement of the complainant Balbir Singh who has specifically deposed that the appellant was a drunkard and did not do any work. The testimony of Puran Chand (PW13), brother-in-law of the deceased, clearly shows that the appellant is guilty of commission of the offence. It is stated by Puran Chand that the appellant had confessed to his crime at a panchayat convened by the appellant himself at Anaj Mandi on 4.3.2009. The appellant in a clever manner tried to introduce the hypothesis of the deceased not having a fully developed mind by examining DW1 Nikki wife of Ashok. The subsequent change in the stand of the complainant in his cross-examination does not shake the veracity of the prosecution case. Therefore, the impugned judgment and conviction should be upheld.

We have given our thoughtful consideration to the contentions as raised by the learned counsel appearing for the parties and with their assistance have gone through the records of the case.

It is not in dispute that the appellant was married to Kalawati @ Usha 18-19 years prior to the incident in question. The appellant and the deceased had two sons from this wedlock. Kalawati @ Usha went missing from her matrimonial home on 29.8.2006. Information regarding this was promptly conveyed on the same day to the complainant-Balbir Singh by Puran Singh (PW13) i.e. one of the complainant's brother-in-law. The complainant along with his uncle (Chacha) Siri Chand proceeded to the matrimonial house of Kalawati @ Usha where they met the appellant Anil Kumar and Subhash. However, Kalawati @ Usha could not be traced. A

highly decomposed body of a woman was discovered on 1.9.2006. Information regarding the same was given to the police by Rati Ram (PW8). Rati Ram has stated that the body was beyond recognition as it was in a totally decomposed and putrefied condition. More than hundred persons including the complainant and appellant had gathered when the body was retrieved. None had identified the dead body at that time. SI Baldev Singh (PW6) in whose presence the decomposed body was taken out of the canal had specifically deposed that the complainant Balbir Singh son of Daya Nand, Ranbir Singh son of Daya Nand, Joginder son of Lachman and others were present. When they were asked to identify the dead body they stated that the dead body was not that of Usha Rani daughter of Daya Nand. The other persons who had gathered stated that the dead body was not of any person of their area. SI Baldev Singh specifically stated that neither the complainant nor any of his relatives had raised any doubt regarding the complicity of the appellant regarding Usha being not traceable or of any harassment etc. meted out to Kalawati @ Usha by the appellant and his family members.

The complainant Balbir Singh has admitted that he lodged a report to the effect that his sister was missing from her matrimonial home on the next day i.e. 2.9.2006. He did not raise any suspicion or doubt about the complicity of the appellant at that stage. It is only after 26 days that an application Ex.P15 was submitted on 23.9.2006. It is in this application that Balbir Singh stated that relations between the appellant and his sister (deceased) were not cordial. Anil Kumar was alleged to be a drunkard

having no source of income. The appellant used to raise demands of money from time to time which were satisfied by the complainant. It is stated that the appellant had identified the dead body recovered on 1.9.2006 to be that of Kalawati @ Usha and his servants had also identified the same. However, Anil Kumar at a subsequent stage refused to identify the dead body. The complainant thus apprehended that either his sister had been killed by all the accused or kept confined in some place so as to kill her. He thus prayed for legal action against the accused. However, the evidence on record does not substantiate these allegations. The Inquest Report (Ex.P9) as well as the evidence of PW6 SI Baldev Singh reflect otherwise. It is clear from the evidence on record that the body recovered on 1.6.2009 was in a highly decomposed condition. Baldev Singh SI, PW6 has specifically deposed that when the decomposed body was recovered on 1.6.2009, the complainant Balbir Singh, the complainant's brothers Ranbir Singh and Joginder Singh son of Lachman Singh were present at the spot along with other persons. They were asked to identify the dead body on which they stated that the body was not of Usha @ Kalawati. They did not raise a finger of suspicion or doubt against the appellant or his family at that time. No allegation of any harassment being meted out to Usha @ Kalawati was raised. None of the persons present at the spot identified the dead body. The complainant identified the salwar of his sister on 30.11.2006 (Ex.P10) in the presence of Rajinder Singh, Sarpanch of village Bapoli, (PW7).

At this stage, it is relevant to note that Balbir Singh, complainant, when recalled for further examination-in-chief on 20.5.2011

stated that he was not present in the Panchayat allegedly held on 4.3.2009. In his cross-examination, Balbir Singh stated that he did not name any of the accused before the police. His signatures were obtained by the police and the contents of the complaint (Ex.P15) were never read over to him. He also stated that the appellant was living separately from his parents along with his wife (deceased) and children. The complainant was present at the time of recovery of the dead body of an unidentified woman on 1.9.2006. The dead body was unidentifiable being in a decomposed condition. There were no clothes on the dead body. Balbir Singh (PW19) stated that he had no personal knowledge regarding the facts mentioned in the complaint because the police obtained his signatures on blank papers. His signatures were obtained on blank papers on 30.11.2006 as well. It is further stated that no 'salwar' was ever shown to him by the CIA staff and he never got recorded his statement on 1.6.2009. The complainant further states that relations between his deceased sister and the appellant were cordial. His sister was suffering from depression and would often leave the matrimonial home without informing anyone. Earlier also she had left her matrimonial home without informing her husband. The appellant and his family members never demanded any money from him. In fact, the complainant and the appellant used to borrow money from each other whenever the need arose. Nothing was ever narrated to Rajinder, Sarpanch, regarding the present case.

There is not an iota of evidence on record to show that Usha @ Kalawati was subjected to any kind of cruelty or harassment at the hands of

the appellant or his family. The complainant himself has taken vacillating stands which coupled with other factors as discussed further casts a serious dent in the prosecution version.

Much stress has been laid by the learned counsel for the State on the panchayat which is stated to have been convened by the appellant himself on 4.3.2009 at Radaur. The appellant is alleged to have confessed his guilt before Balbir Singh Hooda and others. However, PW21 Balbir Singh Hooda, has denied that any such panchayat was convened at Kisan Rest House, Grain Market Radaur in his presence on 4.3.2009. He has denied having made a statement (Ex.PW21/A). Similarly, the testimony of PW7 Rajinder Singh, Sarpanch of village Bapoli, is of no avail. There was no occasion for the appellant to have approached Rajinder Singh who was the Sarpanch of village Bapoli i.e. the village of the complainant. No proceedings of the Gram Panchayat in this regard are on record to corroborate this averment. There is no explanation as to why no action was taken by them from 4.3.2009 till 1.6.2009 against the appellant once he allegedly admitted his guilt on 4.3.2009. It is stated by Rajinder Singh that he was called for the panchayat on 4.3.2009 by the appellant himself and the appellant confessed to his guilt in the Panchayat. However, there is no evidence on record to substantiate the aforesaid convening of the Panchayat leave alone the confession. The prosecution has relied on the statements of Rajinder Singh PW7 and Puran Chand PW13 as well as on the evidence of Pawan Kumar PW20 and Balbir Singh Hooda PW21 to prove the holding of the Panchayat on 4.3.2009 where the appellant is alleged to confess his

guilt. PW20 and PW21 have admittedly not supported the prosecution case. There are serious discrepancies in the evidence of Rajinder Singh PW7 and Puran Chand PW13. It is relevant to note that PW13 Puran Chand in his statement Ex.DB recorded on 28.3.2009 stated that Anil Kumar refused to confess his guilt before the Panchayat on 4.3.2009 whereas in his statement before the learned trial court he states that the appellant confessed to his guilt. He mentions the presence of one Ishwar Dayal, Sarpanch of village Bhukri, who has not been examined by the prosecution. Puran Chand was duly confronted with Ex.DB. Furthermore, there is no explanation for the inaction from 4.3.2009 till recording of the statement of Puran Chand on 28.3.2009 and of Rajinder Singh on 1.6.2009. In case such a confession had indeed been made it is not possible that no action would have been taken by the complainant's side. An extra-judicial confession in any case is a weak type of evidence. In the present case, keeping in view the attending circumstances and the complete lack of corroboration it would not be safe to rely upon the so-called extra-judicial confession to convict the appellant. The Hon'ble Supreme Court in ***Dhan Raj @ Dhand v. State of Haryana*** 2014 (3) RCR (Criminal) 888 while referring to its earlier judgments in ***Gopal Sah v. State of Bihar*** 2008 (17) SCC 128 and ***Pancho v. State of Haryana*** 2011 (10) SCC 165 has reiterated that if an extra-judicial confession suffers from material discrepancies or inherent improbabilities then conviction is not to be based upon such a confession.

There is no doubt that as per DNA Report (Ex.P27) the dead body is proved to be that of Kalawati @ Usha. This fact in itself coupled

with the evidence of Dr. Vijay Pal Khanagwal simply proves that the death in question is homicidal and the deadbody recovered on 01.09.2006 was that of Usha @ Kalawati. The said facts by themselves, however, are not sufficient to prove that Usha @ Kalawati was killed by the appellant or that he disposed of the dead body by throwing it in the canal. There is no evidence on record to connect the appellant with the commission of the offence.

The contention of the learned counsel for the State that it was for the appellant to explain the circumstances in which the deceased had met with her death especially in view of Section 106 of the Indian Evidence Act, 1872 is not tenable. It is a settled principle of law that the initial burden of proving its case lies upon the prosecution. The Hon'ble Supreme Court in *Ashok v. State of Maharashtra* 2015 (4) SCC 393 held that the provisions of Section 106 of the Evidence Act are not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. The prosecution has to first discharge the burden of proving facts from which a reasonable inference can be drawn regarding the death. It is thereafter that the accused by virtue of his special knowledge is to offer an explanation which might lead the court to draw a different inference. Mere non explanation on the part of the accused by itself cannot lead to proof of guilt of the accused. There must be some thing more establishing the connectivity between the accused and the crime.

In the present case, the prosecution has not discharged the initial burden cast upon it. Therefore, there is no question of the applicability of

Section 106 of the Indian Evidence Act in this case. The death of Usha @ Kalawati did not take place in the matrimonial home. She went missing on 29.8.2006 and information was conveyed to the complainant immediately. The dead body recovered on 1.9.2009 was not identified as it was highly decomposed. The complainant raised no finger of suspicion on the appellant till 23.9.2006. There is no explanation why he did not take any action when the appellant allegedly identified the deadbody to be that of Usha @ Kalawati's on 1.9.2006 and then retracted from his statement. Shifting stands of the complainant impinge on his credibility. The complainant himself has stated that the deceased suffered from depression and wandered from home on earlier occasions also. Thus, it would be unsafe to convict the appellant for the offence punishable under Section 302 IPC on the ground that he not furnished an explanation as envisaged under Section 106 of the Evidence Act in the factual matrix of this case.

The evidence on record does not provide the complete link in the chain of circumstances which would point to an inescapable conclusion of the guilt of the appellant. The death of Kalawati @ Usha is not proved to have occurred in the matrimonial home. Information/intimation regarding Kalawati @ Usha missing from her matrimonial home was promptly conveyed to the complainant on 29.8.2006 itself. Presence of the appellant as well as the complainant and his other relatives at the time of recovery of the dead body clearly reflects that all of them were trying to locate Kalawati @ Usha. This fact is further buttressed with lodging of a missing report in respect of Kalawati @ Usha by the complainant Balbir Singh on 2.9.2006

i.e. the day after the dead body was recovered on 1.9.2006. No complaint whatsoever in the 18 years of marriage in respect of cruelty or harassment being meted out to the deceased has been proved on record. No reliance can be placed on the disclosure statement (Ex. P17) as it did not lead to discovery of any fact.

Section 27 of the Indian Evidence Act, 1872 clearly provides as under:-

“How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

The dead body already stood recovered on 1.9.2006. The place of recovery was known to the police authorities. No such recovery has been effected from the appellant pursuant to his disclosure statement which connects him to the crime.

The conduct of the complainant creates a specific doubt on the prosecution version. The delay of about 26 days in submitting the application (Ex.P15) wherein allegations have been raised for the first time against the appellant and other family members is not explained. In fact, PW19 Balbir Singh has deposed before the Court on 25.5.2011 that the relations between his sister and the appellant were cordial. His sister was

suffering from depression. Furthermore, DW1 Nikki wife of Ashok has also deposed that the deceased was not a lady with a fully developed mind. She has denied that the appellant, his family members or Puran Chand (PW13) or Pawan Kumar (PW20) even visited her house on 3.3.2009. Pawan Kumar (PW20) is the co-brother-in-law (Saddu) of the appellant Anil Kumar i.e. Pawan Kumar is married to the sister of the deceased Kalawati @ Usha. Pawan Kumar (PW20) has not supported the prosecution case. All these circumstances create a serious dent in the prosecution case. The benefit of doubt, thus, necessarily accrues to the accused in this case. Suspicion however strong it may be can never take the place of proof. In a case resting on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn have to be conclusive in nature and fully proved. The said circumstances should be complete without a gap in the chain of evidence, consistent solely with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

The Hon'ble Supreme Court in ***Raja @ Rajinder v. State of Haryana*** (2015) 11 SCC 43 has reiterated that in a case resting on circumstantial evidence, the court has to be satisfied that :

- “(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.”

The prosecution in the present case has failed to prove its case beyond reasonable doubt against the appellant. In the facts and circumstances discussed above, the learned trial Court has erred in holding that the prosecution has been able to prove the sequence of events which are sufficient to convict the appellant for the offences punishable under Sections 302 and 201 IPC.

Consequently, this appeal is allowed and the impugned judgment of conviction dated 14.10.2011 and order of sentence dated 19.10.2011 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri are set aside. The appellant is consequently acquitted of the charges against him. He be released forthwith if not required in any other case.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

November 30 , 2016
rupi / om

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No