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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 13th February, 2017
Judgment pronounced on: 6th March, 2017

+ **Crl. A. No.1146/2016**

TULSI RAM

..... Appellant

Through: Mr. O.P.Saxena, Advocate.

versus

STATE

..... Respondent

Through: Mr. Varun Goswami, APP for the State
along with Insp. Kuldeep Singh and SI
Sushil Malik, P.S. Moti Nagar.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J.

1. The appellant has filed the present appeal under Section 374 (2) of the Code of Criminal Procedure against the judgment dated 12.05.2016 by which the appellant has been convicted under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC'). By virtue of the order on sentence dated 16.05.2016, the appellant was sentenced to rigorous imprisonment for life and a fine of Rs.10,000/-, in default of payment of fine, to undergo simple imprisonment for one year for the offence punishable under Section 302 IPC.
2. The case of the prosecution as set out by the trial Court in the impugned judgment is as under:

“1. On receipt of DD no. 57A dt. 13.08.2013, SI Ram Raj alongwith Ct. Ishwar No. 611/W went to Bikshu Govt. hospital, Moti Nagar and collected the MLC no. 2174 of Smt.Shabana @ Sheela W/o Tulsi Ram R/o WZ-46C, Basai Dara Pur, New Delhi aged about 25 years, on which doctor has declared her “brought dead”. In the hospital, statement of mother of the deceased namely Naseema Khatoon was recorded to the effect that she is residing at WZ-46C, Basai Dara Pur, New Delhi in room no. 54 alongwith her daughters Shabana Khatoon and Nazrana Khatoon on rent. She used to work as maid. She has further stated that prior to that, she was residing in the jhuggis in Furniture Market at Kirti Nagar alongwith her daughters. About 11 years ago, Tulsi Ram had married her daughter Shabana Khatoon deceptively while claiming himself as Abdul Rehman. After marriage, she and her daughter Shabana Khatoon came to know that Abdul Rehman is Hindu and his name is Tulsi Ram. After the marriage, two children were born i.e. one boy and one girl to Shabana Khatoon. She has further stated that after the marriage, there used to be quarrel between accused Tulsi Ram and her daughter Shabana Khatoon and accused Tulsi Ram used to beat her daughter and used to ask her to accompany her. Neither she nor her daughter were in this favour as accused Tulsi Ram after consuming liquor use to be out of control. For the last many days, Tulsi Ram used to threaten her daughter to leave her mother otherwise, he will throw acid on her and kill her. Accused Tulsi Ram to fulfill his demand (Zid), took both the children from the school and left them at the house of his relative at Motia Khan. She has further stated that for the last 4/5 days, he used to come to the house daily and quarrel with her daughter. He also used to ask the deceased to leave her mother otherwise, he will not bring the children at the house.

She has further stated in her statement to SI Ram Raj that on 12.08.2013, Tulsi Ram came during night in the house and gave beatings to her daughter and threatened to kill her. Thereafter, the matter was pacified by her and he went to sleep. At about 09:00 AM, she went for her work and her daughter Nazrana Khatoon has already gone to school. Accused Tulsi Ram did not permit her daughter Shabana to

go for work and both were present at the house. At about 04:00 PM, when she reached home alongwith her daughter Nazrana, she found the room locked. On her asking, her daughter Nazrana made a telephonic call from the STD booth to accused Tulsi Ram but he did not pick the phone. They got suspicious and she with the help of stone, broke the lock of the door and after entering in the room, she saw that her daughter Shabana was lying on the floor and she was covered with bed sheet and her mouth was opened. There was a purple colour chunni around her neck and her tongue was out from her mouth. Blood was scattered on the floor. In the meanwhile, her sister in law Munni Khatoon came there. Thereafter, she took her daughter Shabana to the hospital. Munni Khatoon and her daughter Nazrana started cleaning the room. In the hospital, doctor had declared Shabana dead and she has strong belief that her daughter had been murdered by accused Tulsi Ram.

2. On the statement of the complainant Smt. Naseema Khatoon, the present FIR bearing no.289/13 U/s 302 IPC of PS Moti Nagar was registered against the accused and the investigation of this case was carried out. During investigation, the scene of crime was inspected. The bed sheet and purple colour chunni were taken into possession. An empty quarter glass of liquor and steel glass were also found on the slab in the corner of room. A lock was also found on the slab and the same was also taken into possession. The site plan of the room was prepared. Photographs of the spot were taken. Two chance prints were found on the empty glass quarter of whisky.

During investigation, on the same night, secret informer identified the person Tulsi Ram and he was apprehended at the nearby road and he was under the state of intoxication. He was medically examined. Accused made disclosure statement and in his personal search, key of the lock alongwith key ring, a black colour purse containing Rs.200/- cash, some photographs & documents, one Voter I-Card of Tulsi Ram, one Voter I Card of Sheela, one card of National Health Insurance Scheme were recovered. On the next day, complainant Naseema Khatoon came and identified him in the lock up. The postmortem on the

deadbody of deceased was conducted. The statements of the witnesses were recorded and after completion of investigation, chargesheet was filed before the court.”

3. After completion of investigation, charge sheet for the offence under Section 302 IPC was filed. The prosecution in all has examined 21 witnesses. No evidence was led by the defence. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein the appellant pleaded not guilty and claimed to be tried.
4. Mr. Saxena, learned counsel for the appellant submits that the trial Court has erred in convicting the appellant and the judgment passed by the trial Court is based on conjectures and surmises. The impugned judgment suffers from illegalities, and the trial Court ought to have rejected the version of the prosecution, which is improbable and false.
5. Counsel for the appellant strongly urges that the case of the prosecution is based on circumstantial evidence; there is no direct evidence available on record. Counsel further submits that the case of the prosecution is based on the testimonies of the family members of the deceased, being PW1 Nazrana Khatoon (sister of the deceased); PW2 Naseema Khatoon (mother of the deceased); and PW12 Munni (sister-in-law of PW2) are unreliable and even otherwise the testimonies of interested witnesses cannot be relied upon to convict the appellant. Counsel also contends that the testimonies of the public witnesses i.e. neighbours also do not establish the last seen evidence against the appellant at the time of the alleged offence. The counsel for the appellant also submits that there are material contradictions and improvements in the testimonies of the interested witnesses which cast

a serious doubt in the case projected by the prosecution.

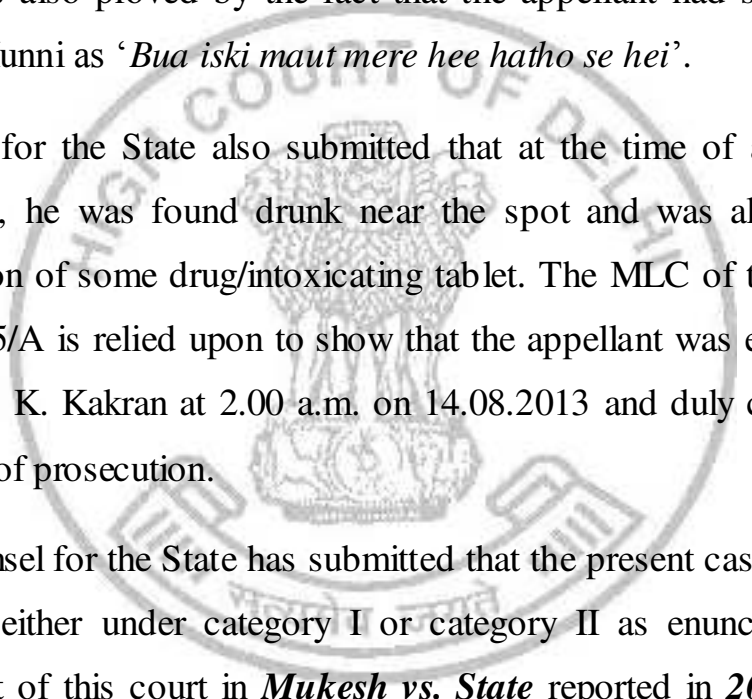
6. Mr. Saxena further contends that the witnesses in this case are tutored and their evidence is not reliable and trustworthy. The counsel for the appellant pointed out that the testimony of PW1 Nazrana Khatoon should not be relied upon as on the day of her evidence in Court, she was of 13 years only and it is in evidence that she was tutored before her testimony was being recorded in Court.
7. It was contended by learned counsel for the appellant that there was no expert opinion adduced by the prosecution as to what kind of drug/tablet of intoxication was recovered from the pocket of the appellant by the police officials on the day of incident. There was no plausible evidence which could prove that the alleged incident was executed by the appellant and the case of the prosecution rests only on suspicion against him.
8. The counsel for the appellant submits that in the cases based on circumstantial evidence, the motive assumes importance; the prosecution has failed to prove the motive to kill the deceased which makes the conviction bad in law. The marriage of the appellant and the deceased was an inter-religion love marriage and 13 years of marriage had passed without there being a single complaint about any marital discord filed against the appellant. In the light of the said averment, the counsel for the appellant submitted that after the deceased was found dead, the family members of the deceased had falsely implicated the appellant in the present case.
9. The counsel submits that the prosecution has failed to establish as to why the house was cleaned immediately after the incident. There is no satisfactory explanation as to what had prompted the family members

to break open the lock, in the absence of police officials. The counsel further submits that the case against the appellant is merely a cooked up story and the appellant has been falsely implicated in the present case.

10. Mr. Saxena also submitted that it was consistently deposed by the mother of the deceased (PW2 Naseema Khatoon) and the sister of the deceased (PW1 Nazrana Khatoon) that they tried to contact the appellant on his telephone number, however, there was no mention of any telephone number on record to prove the said statement.
11. The learned counsel for the appellant also contended that the alleged recoveries made in the present case did not connect the appellant Tulsiram with the crime. The presence of the appellant near the spot was highly doubtful which had emerged from the testimony of PW21 Insp. Ramesh Kalsan and PW18 HC Bani Singh.
12. Additionally, it is stated by counsel for the appellant that Section 106 of the Evidence Act would not be applicable to the facts of the present case as the prosecution has failed to discharge the initial burden to show that the appellant was present at the time of the incident. Counsel also contended that the appellant was happily married with the deceased for the last 13 years, and there was not a single complaint which could show that the appellant used to beat the deceased as stated by all the witnesses.
13. It was also contended that in the MLC of the deceased there was no mention of injury marks to prove that she was beaten by the appellant or there was any scuffle soon before her death. Mr. Saxena canvassed before us that there was no injury on either of the body of the appellant or the deceased which could prove that there was any scuffle between them which resulted in death of the deceased.

14. The counsel for the appellant has relied upon the judgment of *Sharad Birdhichand Sarda vs. State of Maharashtra* reported at *AIR 1984 SC 1622*, wherein it was held by the Hon'ble Supreme Court that where two views are possible, one leading to the guilt of the accused and the other leading to his innocence, the benefit of doubt should go to the accused entitling his acquittal.
15. Per contra, Mr. Varun Goswami, learned APP for the State submits that the prosecution has been able to establish its case beyond any shadow of doubt. The case of the prosecution rests on the circumstantial evidence of the deceased having been last seen alive in the company of the appellant. The case is further corroborated with the medical evidence available on record.
16. The counsel for the State vehemently supported the case of the prosecution and submitted that the testimony of all the prosecution witnesses unerringly pointed towards the guilt of the appellant herein.
17. The counsel for the State further submitted that the alleged incident is corroborated by the testimonies of independent witnesses i.e. PW3 Rajbir and PW14 Raj Sharma, who were neighbours of the deceased and had deposed that on the fateful day the deceased was last seen in the company of the appellant. Also, PW6 Rajesh Tyagi, who was landlord of the tenanted premises, deposed that the appellant had come on the occasion of Eid to meet the deceased at the spot.
18. Learned counsel for the State submits that the medical evidence as well as the FSL report available on record strengthens the case of the prosecution and clearly establishes the guilt of the appellant and the learned trial Court has rightly convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code, hence the

impugned judgment does not call for any interference.

19. Counsel for the State contends that the prosecution has been able to prove its case on the basis of oral evidence and also on scientific evidence. FSL report clearly shows that the marks present on Ex.1a (lock) could have been caused by using the Ex.1b (stone). Counsel also contends that the motive stands proved in view of the consistent stand of PW1 Nazrana Khatoon and PW2 Naseema Khatoon that the appellant used to beat the deceased. Counsel also contends that the motive is also proved by the fact that the appellant had stated before PW12 Munni as '*Bua iski maut mere hee hatho se hei*'.
20. Counsel for the State also submitted that at the time of arrest of the appellant, he was found drunk near the spot and was also found in possession of some drug/intoxicating tablet. The MLC of the appellant Ex.PW15/A is relied upon to show that the appellant was examined by PW15 S. K. Kakran at 2.00 a.m. on 14.08.2013 and duly corroborated the case of prosecution.
21. The counsel for the State has submitted that the present case is squarely covered either under category I or category II as enunciated in the judgment of this court in *Mukesh vs. State* reported in **2010 (2) JCC 1563** and has relied upon para 52 which reads as under:

"52. Having examined the decisions of the Supreme Court on the point of death of a wife in her matrimonial house, we deem it appropriate to classify the said judicial decisions into undernoted 4 broad categories for the reason we are finding considerable confusion in the minds of the subordinate Judges as to the correct position of law:

I. In the first category fall the decisions where it is proved by the prosecution that the husband was present

in the house when the wife suffered a homicidal death and rendered no explanation as to how his wife suffered the homicidal death. See the decisions reported as State of Rajasthan v. Parthu (2007) 12 SCC 754; Amarsingh Munnasingh Suryavanshi v. State of Maharashtra AIR 2008 SC 479; Ganeshlal v. State of Maharashtra (1992) 3 SCC 106; Prabhudayal v. State of Maharashtra (1993) 3 SCC 573; Dynaneshwar v. State of Maharashtra (2007) 10 SCC 445; Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681; Bija v. State of Haryana (2008) 11 SCC 242 and State of Tamil Nadu v. Rajendran (1999) 8 SCC 679;

II. In the second category are the decisions where the prosecution could not prove the presence of the husband in the house when the wife suffered a homicidal death but the circumstances were such that it could be reasonably inferred that the husband was in the house and the husband failed to render any satisfactory explanation as to how his wife suffered a homicidal death. The circumstances wherefrom it could be inferred that the husband was in the house would be proof that they lived in the house and used to cohabit there and the death took place in such hours of the night when a husband was expected to be in the house i.e. the hours between night time and early morning. See the decisions reported as State of U.P. v. Dr. Ravindra Prakash Mittal (1992) 3 SCC 300 and Narendra v. State of Karnataka (2009) 6 SCC 61.

III. In the third category would be proof of a very strong motive for the husband to murder his wife and proof of there being a reasonable probability of the husband being in the house and having an opportunity to commit the murder. In the decision reported as Udaipal Singh v. State of U.P. (1972) 4 SCC 142 the deceased wife died in her matrimonial home in a room where she and her husband used to reside together. The accused-husband had a very strong motive to murder the deceased which was evident from the letter written by him to his mistress, which letter clearly brought out the feeling of disgust which the accused had towards the deceased. The accused had the opportunity to commit the murder of the

deceased as there was evidence to show the presence of the accused in the village where the house in which the deceased died was situated at the time of the death of the deceased. Noting the facts that the accused had a strong enough motive and an opportunity to murder the deceased, noting that there was no evidence that the appellant was seen in his house by anybody, the Supreme Court convicted the accused.

*IV. In the fourth category are the decisions where the wife died in her matrimonial house but there was no evidence to show presence of the husband in the house at the time of the death of the wife and the time when the crime was committed was not of the kind contemplated by the decisions in category II and was of a kind when husbands are expected to be on their job and there was either no proof of motive or very weak motive being proved as in the decision reported as *Khatri Hemraj Amulakh v. State of Gujarat AIR 1972 SC 922* and *State of Punjab v. Hari Kishan 1997 SCC Cri. 1211.*”*

22. We have heard learned counsel for the parties and considered their rival submissions and perused the impugned judgment as well as the trial Court record. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimonies of material witnesses. The edifice of the case of the prosecution against the appellant is built upon the statement of PW2 Naseema Khatoon (mother of the deceased), who is complainant in the present case. Also, the testimonies of PW1 Nazrana Khatoon (sister of the deceased), PW12 Munni (sister-in-law of PW2), PW3 Rajbir (neighbour of PW2), PW6 Rajesh Tyagi (landlord of the tenanted premises where PW2 stayed with the deceased) and PW14 Raj Sharma (neighbour of PW2) are necessary to decide the present appeal.
23. PW2 Naseema Khatoon (mother of the deceased) in her examination-in-chief deposed that Shabana Khatoon (since deceased) was her

daughter and was married 10/15 years ago to the appellant herein. At the time of marriage, the appellant had falsely stated that he was Abdul Rehman and subsequently, it was learnt that his name was Tulsi. The documents of the marriage had been stolen by the appellant. The deceased had two children out of the said wedlock i.e. one son aged about 6 years and a daughter aged about 9 years. The children were named as Kajal and Suraj by the appellant and Shabnam and Tamanay by her deceased daughter. PW2 had further deposed that the appellant used to quarrel and beat the deceased after consuming liquor. The appellant used to force the deceased to eat pork and when she used to refuse the same, she was thrown out from the house without clothes at 12:00 AM/02:00 AM by him. Once, the appellant had taken away the deceased on the pretext of visiting Mazar and to put a Chadar on it, to which she allowed. PW2 had testified that the two children of the deceased were born at the house of the appellant and after the birth of two children; the appellant started beating her as a consequence of which her daughter used to remain un-happy. PW2 had also testified that after her daughter was fed up with the treatment given to her by the appellant, the persons from the village of the appellant helped her and she had hidden herself in the village Bhaisa Chaube for three days. PW2 had deposed voluntarily and clarified that a person from the village of the appellant had kept the deceased in his house for three days because the appellant had badly beaten her. It was further deposed by PW2 that the deceased sold her anklet which she had given to her in the marriage and came to Delhi. The deceased sold the anklet for the journey and she came to her residence at Kirti Nagar furniture block. Thereafter, the appellant also came and pleaded that he would behave well and after which the deceased and the appellant started

living together but the appellant behaved well for only some days. She further testified that the deceased had left behind her two children in the village when she had come to her at Delhi after selling her anklet. She gave Rs. 3,000 to the appellant to bring the two children from the village as journey fare, so that two children could meet their mother i.e. her deceased daughter. Thereafter, the appellant brought the children to Delhi.

24. It was further deposed by PW2 that she shifted from Kirti Nagar to Basai Darapur along with the deceased and the appellant. The appellant took his children with him without informing PW2. The appellant returned on the occasion of Eid after Ramzan. He did not bring the children with him. She and the deceased asked him as to where the children were as it was occasion of Eid and the deceased wanted to meet her children. The appellant abused the deceased and quarreled with the deceased whole night after consuming liquor. She had further deposed that after resolving the issue, the appellant and the deceased went to sleep. On 13.08.2013, when PW2 Naseema was going for her duty at 9.00 AM, she asked the deceased to accompany her for work but the appellant objected that she would not go for work that day as he was going to bring the two children from Motia Khan, where he had kept the children and the deceased would cook food for them.
25. PW2 Naseema Khatoon next deposed that on the same day, at about 04:00 PM, she returned with PW12 Munni Khatoon (sister-in-law of PW2) and brought her daughter PW1 Nazrana from the school and came back to her room at Basai Darapur. There was a lock on the room. PW2 asked the neighbours whether her deceased daughter had given them the key and also enquired from them where her daughter had

gone. She was told by her neighbours that till 01:30 PM, the deceased and the appellant were there at the house and she had cooked food and the appellant had also brought an apple and had cut the same and had given the same to her daughter and her daughter had also cut cucumber salad. Thereafter, PW2 asked PW1 Nazrana to telephone the appellant on his mobile, so that they could get the key of her house. Her daughter Nazrana made a telephonic call through STD to the appellant but he did not pick up the same. She had further deposed that she suspected that the appellant might have done something to her deceased daughter. PW1 Nazrana broke the lock of the house with the help of a stone (SILBATTI) of a neighbor and when the lock of the house was broken open, she saw that her deceased daughter was sleeping on the floor and that she was covered with a sheet up to her neck and her tongue was out. She shouted and neighbours gathered. She put the tongue of the deceased back into her mouth and kept rubbing her to bring her back to consciousness. Thereafter, she went with PW12 Munni Khatoon to Bichua hospital with the deceased, where she was informed that her daughter was no more.

26. PW2 Naseema Khatoon had further deposed in her examination-in-chief that the deceased was sleeping on the floor and there was a purple colour Chunni over her neck. There was blood scattered on the floor. The police picked up the glass, the sheet and the stone from the spot and took them into their custody. There was a bottle of liquor which had been consumed and was also lying in the house. One tablet of intoxication was also recovered from the pocket of the appellant on the same day of the incident. The police had taken the photographs of the room and all the articles lying in the room. The appellant had burnt the deceased's hand with Cigarette butts. "OM" had been engraved on her

hand by the appellant. He also used to make her eat pig meat. The key of the room, where the incident took place was recovered from the appellant. The police had seized the glass, bed sheet, the stone, the tablet of intoxication and the lock and had prepared documents for the same on which she put her thumb impression. PW2 had also deposed that the appellant used to threaten the deceased that if she lived with her mother, he would beat her a lot and would destroy her face and would also throw acid on her so that the deceased would not be able to show her face to anyone.

27. In her cross-examination, PW2 Naseema Khatoon had reiterated her statement and nothing contrary had emerged on record and supported the case of prosecution on all material aspects.
28. PW1 Nazrana Khatoon (sister of the deceased) in her examination-in-chief deposed that Shabana Khatoon (since deceased) also known as Sheela was her sister. She knew Tulsi Ram, the appellant herein. She had voluntarily stated that earlier the appellant used to say that he was a Muslim and by deception he married her deceased sister and thereafter, they learnt that he was a Hindu. PW1 had further deposed that her deceased sister expired on 13.08.2013. She further deposed that 2-4 days before the death of her sister, there was a quarrel between her deceased sister and the appellant and she had witnessed that quarrel. Her deceased sister had two children i.e. one daughter and one son. After 2-3 days of the quarrel, her sister's daughter Shabnam had gone with her to the school in which she also studied and on that day, when the school closed, she had gone to take Shabnam, but she did not find her and went to her teacher and learnt that the appellant had taken away Shabnam from the school. She had further deposed that the appellant

had also taken away Tamanay, son of her deceased sister, also called Suraj from the house informing her deceased sister that he was to get his name recorded in the school.

29. PW1 had further deposed that she, her mother and her deceased sister used to work in houses. At about 01:15 PM, she went to the house where her deceased sister used to work and came to know that her deceased sister had not come for work. When she alongwith her mother went home, they found the door of their house locked. Thereafter, she asked her Bua whether her deceased sister or her brother-in-law had given the key of the house, to which her Bua answered that the same had not been given to her. Thereafter, she made enquiries from her sister-in-law (Bhabhi) living upstairs but it was learnt that the key had not been given to her also. Then on the asking of her mother, she made a telephonic call to her brother-in-law i.e. the appellant herein, but he did not pick up the phone. She got frightened and then with the help of stone, she broke the lock and saw her sister lying on the floor and there was a bed sheet up-till her neck. Her tongue was outside from the mouth and her eyes were looking upwards. She also deposed that there was a violet colour chunni around her neck. When she screamed, her mother and others came. Then they all put water on her deceased sister and tried to rub her hands but she did not open her eyes. She was taken to the hospital by their neighbours. She had further deposed that her Bua put her deceased sister on the rickshaw and with her mother, took her sister to the hospital. It was also deposed by PW1 that when her deceased sister was taken away, she found blood on the floor, which she cleaned. She did not know that at that time whether her deceased sister was alive or not.

30. PW1 Nazrana Khatoon had categorically stated in her cross-examination that there was only one key of the lock of her house and the key of the same used to be with her or her Bhabhi in case her mother would visit the market. On the fateful day of 13.08.2013, when she left for the school in the morning, her deceased sister and the appellant were present at the house and it was not locked. She had admitted that the lock was broken on the same day by her with a stone.
31. PW12 Munni Khatoon (sister-in-law of PW2) had deposed in her examination-in-chief that PW2 Naseema Khatoon is her Bhabhi and she alongwith her daughter PW1 Nazrana Khatoon lived in the accommodation above her accommodation at Basai Dara Pur. She had further deposed that the appellant used to quarrel with his wife and used to beat her and also used to abuse her and his mother-in-law. She had further deposed that the appellant used to drink daily and used to beat the deceased and quarrel with her and often told her that he would kill the deceased.
32. PW12 had further deposed that she along with PW2 Naseema, the deceased and PW1 Nazrana used to go together for work. It was further deposed by PW12 that on the fateful day i.e. 13.08.2013 she alongwith the deceased, PW2 Naseema and PW1 Nazrana were going for work but the appellant asked the deceased not to go for work and did not let her go for work and said that she should cook the meals and that he was going to bring the child. They thought that accused had gone to bring the child and they had gone for their work. She had further deposed that she came back at 04:00 PM from work along with PW2 Naseema and PW1 Nazrana, who sat in her room after work. When both PW2 and PW1 went to their room after taking water, she heard a noise upstairs.

People from the neighbourhood thought that her daughter i.e. daughter of this witness had expired, when they heard the noise. Thereafter, she asked some neighbours and came to know that the deceased had expired. She went upstairs and saw that the deceased was unconscious. She thought that Shabana was unconscious and was still alive and she ran to bring a rickshaw. Thereafter, she and PW2 Naseema took the deceased in the rickshaw to the hospital, where the doctor declared her as brought dead.

33. In the facts and circumstances of the case in hand, the testimony of the neighbours PW3 Rajbir and PW14 Raj Sharma assume importance. PW14 in his examination-in-chief deposed that he resided in room No. 56 of WZ-46C, Basai Darapur. On the fateful day of 13.08.2013 till about 10/11 AM, he had seen the appellant and his wife in their room No. 54 of House No. WZ-46C and they were sitting together and were talking. PW14 had further deposed that he had seen them together till 01:30/02:00 PM but thereafter he left for his duty. He had further deposed that there used to be quarrels between the appellant and his wife.
34. On similar lines, the testimony of PW3 Rajbir (neighbour) remained consistent that on the fateful day of 13.08.2013, he saw that the deceased and the appellant were in their room in the morning. He had further deposed that in the afternoon, he saw that both of them had gone out of the house. The testimony of PW3 also remained consistent as to the frequent quarrels between the appellant and his wife.
35. PW6 Rajesh Tyagi (landlord of the rented premises where PW2 stayed with the deceased) deposed that he gave a room on the third floor, bearing No. 54 to PW2 Naseema Khatoon on rent. The deceased had

come to stay at her mother's house on the occasion of Eid. The husband of the deceased used to come to the room and used to quarrel and used abusive language and he had informed PW1 Naseema Khatoon that the same should not happen and that the room be vacated if it could not be stopped.

36. Besides the above public witnesses, PW11 SI Rameshwar had proved the copies of DD Nos. 57A, 63A and 64A, all have been recorded vide dated 13.08.2013 and were proved as Ex.PW11/C. PW11 also proved the copy of FIR which is Ex.PW11/A. PW18 HC Bani Singh proved the seizure memo of stone and lock found at the spot, which is Ex.PW2/F. PW18 has also proved the arrest memo and the personal search memo, copies of which are Ex.PW18/3 and Ex.PW18/4 respectively.

Medical Evidence:

37. PW16 Dr. Komal Singh, HOD, Department of Forensic Medicine, DDU Hospital conducted post-mortem examination of the deceased on 14.08.2013 at 2.15 PM. His detailed report is Ex.PW16/A prepared by him, the following injuries were found on the body of the deceased:

“i) A feeble ligature mark encircling the neck completely placed anteriorly at the level of thyroid cartilage and went horizontally towards posterior hair line. Ligature mark is in a form of band size being 30 cm x 2.5 cm – 3 cm. It was placed 7 cm below from the chin, and 11 cm from sternum and 6 cm from mastoid on either sides.

ii) One crescentic shaped nail abrasion on the left lateral side of neck reddish brown in colour.

iii) One bruise of size of 2 cm x 1 cm present over left tip of the shoulder greenish in colour.”

PW16 Dr. Komal Singh had opined that the cause of death was due to

asphyxia caused by ligature strangulation and the manner of death was homicidal and time since death was approximately 24 hours prior to the post-mortem examination.

Scientific Evidence:

38. PW20 S. S. Badwal, Senior Scientific Officer, FSL Rohini had examined Ex.1a (metallic padlock), Ex.1b (stone) and Ex.2 (metallic key) on 27.11.2013. His detailed report is Ex.PW20/A. As per his report, he opined that the marks present on Ex.1a (metallic padlock) indicated that these could have been caused by using the Ex.1b (stone). Further, Ex.1a (metallic padlock) and Ex.2 (metallic key) were examined and after examination, he had found that the said Exhibits are in working condition.
39. Admittedly, there is no eye witness of the occurrence and the prosecution case rests on the circumstantial evidence. The initial version reported to the police was of PW2 Naseema Khatoon (mother of the deceased). The police arrived to the hospital on receipt of a call received from Acharya Bhikshu Hospital at 08.30 P.M on 13.08.2013. Daily Diary (DD) entry No. 57A, which is Ex.PW11/C was recorded by PW11 SI Rameshwar at police station Moti Nagar on 13.08.2013. The investigation was assigned to SI Ram Raj who along with Constable Ishwar Singh reached the hospital and recorded the statement of PW2 Aneesa Khatoon which is Ex.PW2/A. Rukka (Ex.PW8/A) was received and the FIR (Ex.PW11/A) was registered by PW11 SI Rameshwar on 13.08.2013 at about 10.15 P.M. After the case was registered, further investigation was assigned to PW21 Insp. Ramesh Kalsan. PW21 testified that during the personal search of the appellant, the key of the lock of room No. 54, third floor, Basai

Darapur was recovered from his possession.

40. It is on record that the appellant was named in the complaint made by PW2 Naseema Khatoon (mother of the deceased) to the police officials, which formed the basis of rukka (Ex.PW8/A) and FIR (Ex.PW11/A). Since the needle of suspicion was pointing towards the appellant, the police arrested him. The appellant was taken to Acharya Shree Bhikshu Government Hospital where PW15 Dr. S.K. Kaakran, conducted the medical examination of the appellant and prepared the MLC (Ex.PW15/A) recording therein that there was smell of alcohol detected from the mouth of the appellant and also opined that the injuries sustained by the appellant as simple.
41. In the above backdrop, the question which arises for our consideration is as to whether the prosecution has been able to prove facts from which a reasonable inference can be drawn that the appellant is guilty of the murder of the deceased?
42. The facts proved by the prosecution are being enumerated as under:
- i) The deceased died a homicidal death.
 - ii) The house where the deceased was found dead was cohabited by the appellant and the deceased along with PW1 Nazrana Khatoon (sister of the deceased) and PW2 Naseema Khatoon (mother of the deceased).
 - iii) On the fateful day of 13.08.2013, PW2 Naseema Khatoon and PW12 Munni had asked the deceased to accompany her for work, but the appellant restrained the deceased and told her that she would not go for work as he was going to bring children from Motia Khan and the deceased would cook food for them.

Therefore, they had left the deceased in the company of the appellant.

- iv) The consistent testimony of the witnesses stating that the appellant used to beat the deceased after intoxication and the relations between the deceased and the appellant were strained.
- v) There were no signs of any forced entry or the presence of an intruder in the house where the deceased was found dead. And even otherwise, this stand was not taken by the appellant in his defence.
- vi) The post-mortem of the deceased was conducted at about 2.15 P.M. on 14.08.2013. As per the post-mortem report Ex.PW16/A, the deceased died 24 hours before the conduct of the post-mortem, meaning thereby, that the deceased died at about 02.15 P.M. on 13.08.2013.
- vii) The circumstance that the appellant admitted in his examination under Section 313 of the Code of Criminal Procedure that from his personal search one key of the lock of room No.54 was recovered, when coupled with the last seen evidence of PW1 Nazrana Khatoon, PW2 Naseema Khatoon and the testimonies of the neighbours i.e. PW3 Rajbir and PW14 Raj Sharma establishes that the appellant was present in the house in question around the time of the death of the deceased.

43. It has been proved by the prosecution that the deceased was found dead in the dwelling house where she was residing with the appellant and was also last seen together with him. It becomes incumbent on him to offer a plausible explanation for the death of his wife.

44. In *State of West Bengal v. Mir Mohammad Omar*, reported in *AIR 2000 SC 2988*, wherein the Hon'ble Supreme Court with respect to Section 106 of the Indian Evidence Act observed as under:

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning

process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the court what else happened to Mahesh at least until he was in their custody.

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37. The Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

45. In ***Ram Gulam Chaudhary & Ors. v. State of Bihar*** reported in (2001) 8 SCC 311, the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held by the Hon'ble Supreme Court that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they have murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the Section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of his special knowledge must offer an explanation which might lead the Court to draw a different inference.
46. In a recent decision of ***State of Rajasthan Vs. Thakur Singh*** reported at JT 2014 (8) SC 50, the Hon'ble Supreme Court held as under:

“16. Way back in **Shambhu Nath Mehra v. State of Ajmer** [1956 SCR 199] this Court dealt with the interpretation of Section 106 of the Evidence Act and held that the section is not intended to shift the burden of proof (in respect of a crime) on the accused but to take care of a situation where a fact is known only to the accused and it is well nigh impossible or extremely difficult for the prosecution to prove that fact. It was said:

"This [Section 101] lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not."

17. In a specific instance in **Trimukh Maroti Kirkan v. State of Maharashtra** (2006) 10 SCC 681 this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said:

“Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation

which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

18. Reliance was placed by this Court on **Ganeshlal v. State of Maharashtra** [JT 1992 (2) SC 592] in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in **Dnyaneshwar v. State of Maharashtra** [2007 (10) SCC 445] this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In **Jagdish v. State of Madhya Pradesh** [JT 2009 (12) SC 300] this Court observed as follows:

"It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."

21. More recently, in **Gian Chand v. State of Haryana** [JT 2013 (10) SC 515], a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in **Shambhu Nath Mehra** was reiterated. One of the decisions cited in **Gian Chand** is that of **State of West Bengal v. Mir Mohammad Omar** [JT 2000 (9) SC 467] which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act in the following words:

"During arguments we put a question to learned Senior Counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. Learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise."

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts."

47. From above, it is clear that the Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.
48. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it

complete. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence took place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

49. Applying the law to the facts of the present case, we find that in this case also the offence has taken place inside the privacy of the house. There are injury marks on the body of the deceased and as per the post-mortem report she died due to asphyxia caused by ligature strangulation. This is yet another case where the offence has been committed with brutality within the house itself, yet the initial burden to establish the case would undoubtedly be upon the prosecution. The appellant has failed to give a cogent explanation with respect to his statement under Section 313 of the Code of Criminal Procedure that on the fateful day he along with the deceased and PW2 Naseema Khatoon left for his job. The appellant has failed to show in his defence that he attended his job in the morning of 13.08.2013 and also failed to give any explanation as to where he was working. In our view, the initial burden has been discharged by the prosecution on the basis of the evidence of PW1 and PW2, which proved that the appellant used to beat the deceased under the influence of liquor; and by the evidence of PW3 Rajbir and PW14 Raj Sharma to show that the appellant was last seen in the company of the deceased and was found at the place of the incident. In view of Section 106 of the Evidence Act, the burden would thus shift on the appellant to give a cogent explanation as to how crime

has taken place.

50. A bare reading of the post-mortem report clearly suggests that the death had occurred around 2.30 pm on 13.08.2013 and corroborates the version of the prosecution. In our view this becomes an additional link in the chain of circumstances to make it complete. Furthermore, PW20 S. S. Badwal, Senior Scientific Officer, FSL has proved that there were marks on the lock recovered from the spot, which is Ex.1a, and these marks were caused by a stone, which is Ex.1b. The circumstances strongly indicate that the appellant is responsible for the commission of the crime. Reliance is being also placed on *Stirland v. Director of Public Prosecution* reported at **1944 AC 315**, wherein it has been observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished, but also to see that a guilty man does not escape.
51. So far as the contention of the appellant with respect to motive to kill the deceased and the absence of complaints lodged by the deceased or her parents with the police at any time to support the allegations of beatings given to the deceased. The learned trial Court in paragraph 50 dealt the motive to commit the offence which reads as under:

“50. In the present case, accused has motive to kill the deceased. It has come in the evidence of PW-1 Nazrana Khatoon, PW-2 Naseema Khatoon and PW-12 Munni that accused used to beat the deceased. It is also deposed by PW-1 and PW-2 that a quarrel had taken place before the incident. Even PW-2 Naseema Khatoon has deposed that accused and Shabana were quarreling during the whole night of 12/13.08.2013 and she made the accused understand and both accused and Shabana slept together.

PW-1 Nazrana Khatoon also stated that a quarrel had taken place between the accused and deceased in her

presence. Even PW-12 Munni has deposed that accused used to say “Bua iski maut mere hee hatho se hei”. No suggestion was given to PW-12 by the accused that he had not uttered these words. No suggestion was given to PW-1 and PW-2 that there was no quarrel between him and the deceased. Moreover, in statement recorded U/s 313 Cr.P.C., the accused has stated that there was a normal dispute between him and the deceased. Even PW-6 Sh. Rajesh Tyagi, landlord of the room no. 54 has deposed that there used to be quarrel between the accused and the deceased. I am of the view that from the testimonies of PW-1, PW-2, PW-6 and PW-12, it is proved that there used to be quarrel between the deceased and the accused and PW-2 Naseema Khatoon has specifically proved that on the night of 12/13.08.2013, there was a quarrel between the accused and deceased.”

52. Undoubtedly, the prosecution did not produce any complaint with regard to the beatings given to the deceased but has relied upon the testimonies of PW1 Nazrana Khatoon (sister of the deceased), PW2 Aneesa Khatoon (mother of the deceased/complainant herein) and PW12 Munni Khatoon (sister-in-law of PW2). The beatings given to the deceased were further corroborated from the testimonies of the independent witnesses PW3 Rajbir, PW6 Rajesh Tyagi (landlord) and PW14 Raj Sharma. They all remained consistent as to the beatings given to the deceased and corroborated the case of the prosecution on all material aspects. There are no discrepancies in their statements about the beatings given to the deceased and last seen evidence of the appellant on the fateful day. They all spoke in one voice that it was the appellant who was last seen in the company of the deceased. In our view, the prosecution has cogently established that the relations between the deceased and the appellant were not cordial. In view of the observation made by the learned trial Court in the foregoing para, we find the ocular evidence led in support of the prosecution case as

wholly reliable and see no reason to discard it. The submission, therefore, that the appellant had no motive for the commission of crime is not of any significance.

53. So far as the contention made by the counsel for the appellant with respect to the absence of injury marks on the body of the deceased to prove that she was beaten by the appellant or there was any scuffle soon before her death.
54. To deal with the above contention, we may rely upon the post-mortem report of the deceased wherein it has been noted as “*One crescentic shaped nail abrasion on the left lateral side of **neck** reddish brown in colour*” and “*One bruise of size of 2 cm x 1 cm present over left tip of the **shoulder** greenish in colour.*” In our view, the injuries mentioned in post-mortem report show that the deceased had suffered injuries which could have been the possible reason for the presence of blood on the floor. The counsel for the appellant also contended that there is no explanation as to why the family members of the deceased had cleaned the blood on the spot immediately. In this regard, we are satisfied with the averment made by the APP for the State that while cleaning the floor PW1 Nazrana was not aware that her sister had died and under this impression she cleaned the spot. Therefore, no adverse inference can be drawn against the prosecution on that score.
55. In view of the fact that the prosecution was able to establish that the death of the deceased took place around the time when the appellant was present in the said house; that the relations between the deceased and the appellant were strained; that the deceased and the appellant were last seen together; that the post-mortem report suggested the time since death was approximately 24 hours prior to the post-mortem

examination, Section 106 of Evidence Act made it incumbent upon the appellant to explain as to how the deceased died a homicidal death as also how the deceased sustained injuries found on her person and the fact that the appellant did not furnish a satisfactory explanation in respect of aforesaid circumstances is a clear pointer to the fact that the appellant committed the murder of the deceased. Furthermore, the appellant remained absent from the room where he cohabited with the deceased and the other family members till the time he was arrested near the spot in the state of intoxication clearly point out towards the subsequent conduct of the appellant and is admissible under Section 8 of the Evidence Act. From the aforesaid conspectus of facts, a reasonable inference can be drawn that the deceased was murdered by the appellant.

56. In the light of above discussion, we are of the view that there is no infirmity in the judgment of the trial Court by which the appellant was convicted under Section 302 IPC. The findings of the trial Court against the appellant are therefore confirmed.
57. The appeal is dismissed accordingly.
58. Trial Court Record be sent back along with a copy of this order.

G.S.SISTANI, J.

VINOD GOEL, J.

MARCH 6th, 2017

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