

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

+ CRL.A. 710/2003

Reserved on: 16.01.2019

Date of decision: 12.02.2019

IN THE MATTER OF:

GOVIND RAJ

..... Appellant

Through: Ms. Rakhi Dubey, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Gupta, APP for State

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

HIMA KOHLI, J.

1. The appellant is aggrieved by the judgment dated 31.05.2003 passed by the learned Additional Sessions Judge in Session Case No.1/2000 arising out of FIR No.13/2000 registered against him at Police Station: Sriniwas Puri under Section 302 IPC, whereunder the trial court has convicted him for the murder of his wife, Walli under Section 302 IPC and vide order on sentence passed on the same date, he was sentenced to imprisonment for life under Section 302 IPC and pay a fine of Rs.2,000/-. In default of payment of fine, the appellant has been directed to undergo further rigorous imprisonment for two months.

2. The facts of the case as elicited from the record are that the deceased, Walli was residing with her parents in the Madrasi Camp at Jal

Vihar, Delhi. Her father, Kalrayan used to run an Idli Dosa shop from his jhuggi and make sales to the residents of the area. Walli's mother used to work as a domestic help at B-Block, Lajpat Nagar. From the age of 10 years, Walli also started accompanying her mother to work. Both, mother and daughter used to leave together for their work every morning. On 30.6.1996, Kalrayan got Walli married to the appellant, Govind Raj at his native village in Tamil Nadu. After their marriage, the appellant accompanied Walli to Delhi. On reaching Delhi, Walli and her husband, the appellant started residing in jhuggi No.2, situated close to the jhuggi of Kalrayan.

3. On the fateful day, on 17.01.2000 at about 5:30 AM, when Kalrayan (PW-4) woke up and started attending to his daily chores, as was usual, he went to Walli's jhuggi to wake her up. When he reached her jhuggi, he saw that Walli was lying dead on a *chattai* on the floor with her tongue entangled between her teeth and a rope tied around her neck. It is the prosecution case that when Kalrayan reached his daughter's jhuggi, he saw the appellant coming out with a bag in his hand and at that time, he was at a distance of about 20 feet from the jhuggi. On seeing Kalrayan, the appellant allegedly ran away. Walli's father raised a hue and cry, whereafter the neighbours gathered there. One of the neighbours in the Madrasi Camp, namely, Silve Raj (PW-3) informed the police, who came to the spot. The appellant was held responsible for the murder of his wife, Walli and charged with the offence punishable under Section 302 IPC. The appellant pleaded not guilty to the charge and claimed trial.

4. In support of its case, the prosecution examined 14 witnesses. HC Sardar Singh (PW-1), working as a Duty Officer at P.S. Srinivas Puri, deposed that on 17.01.2000, at about 7:35 AM, he received a telephonic call from the Pradhan of Madrasi Camp Jhuggis informing that the accused had run away after killing his wife, Walli in jhuggi No.2. PW-1 recorded DD No. 24-A and proved the same as Ex.PW1/A. ASI Nirmal Kumari (PW-2), who was posted as a Duty Officer at P.S. Srinivas Puri, deposed about recording the formal FIR No.13/2000 (Ex.PW2/B). She also proved the *rukka* brought by Constable Jog Ram, who had accompanied the I.O., SI P.C. Yadav to the spot (Ex.PW2/A). SI Madan Pal (PW-7) was the Draftsman, who visited the place of occurrence with the I.O., took rough notes and measurements on the pointing out of Kalrayan (PW-4) and prepared the scaled site plan (Ex.PW-7/A). He stated that the distance shown in the site plan from point 'B', indicating the place from where PW-4 had seen the accused when he was fleeing away, to point 'C', indicating the position of the accused when he was fleeing, was 7.10 meters (approximately 23 feet). Constable Vajinder Singh (PW-9) deposed about delivering a copy of FIR No.13/2000 to the concerned Metropolitan Magistrate at his residence at 4:30 PM on the same day.

5. Mr. Rajesh Kumar, SDM, Defence Colony (PW-8) stated that he had received a telephonic message from P.S. Srinivas Puri on 17.01.2000, at 9:30 AM about a death occurring at the Madrasi Camp, Jal Vihar, New Delhi. He was informed that the case appeared to be of the murder of one Walli by strangulation by her husband. PW-8 visited the place of occurrence where he was informed that the dead body had

been removed to AIIMS Mortuary. He proceeded to AIIMS Mortuary, inspected the body and noticed several strangulation marks on the front side of the neck. The dead body of Walli was identified by her father (PW-4). Since he did not know either Hindi or English, the statement of PW-4 was got recorded in the presence of the SDM with the help of a translator. The brief facts of the case recorded by PW-8 in his own hand are marked as Ex.PW8/A. The application moved for conducting an autopsy of the dead body was proved by him as Ex.PW8/B. The death report of the deceased was proved as Ex.PW8/C. The statement of the interpreter/translator, Shri Balmurgan (PW-5) as recorded by the I.O. in the presence of PW-8, was proved as Ex.PW5/B and the statement of Kalrayan (PW-4) was proved as Ex.PW4/C.

6. Inspector Raj Kumar Khattana, SHO, P.S. Srinivas Puri (PW-11) narrated the same sequence of facts as recorded above and deposed that on completion of the investigation, he had prepared the charge-sheet and filed the challan in court. Constable Kuldip Singh (PW-12) deposed that he had removed the dead body of Walli to the Mortuary of AIIMS Hospital, where the post mortem was conducted and the dead body was handed over to Kalrayan. PW-12 proved the *pullanda* containing the case material that was sealed with the seal of the Hospital, vide sealing memo, Ex.PW12/A, which was in turn handed over by him to the I.O. at the Police Station for being deposited in the *Malkhana*.

7. SI P.C. Yadav, the I.O. in this case (PW-13) testified that with the help of the translator (PW-5), he had recorded the statement of the father of the deceased, Kalrayan, marked as PW4/A, attested by him at point 'B' and PW-5 had certified the translation as correct vide Ex.PW-13/A.

Ex.PW13/B was the endorsement made by PW-13 for registration of the case, and handed over to Constable Jog Ram, who got the case registered at the Police Station. The I.O. informed the SDM of the crime and prepared the site plan, Ex.PW13/C. He deposed about completion of the inquest proceedings by the SDM at AIIMS Hospital and the fact that PW-4, father of Walli had identified the dead body and he had recorded his statement, translated with the help of Shri Balmurgan (PW-5). On conclusion of the post mortem, the dead body was handed over to PW-4 and the I.O. deposed that he had received a *pullanda* from Constable Kuldip Singh (PW-12), sealed with the seal of 'Department of Forensic Medicines, AIIMS, New Delhi' alongwith the sample seal that was handed over by the Doctor to PW-12. The same was seized by the I.O. against his signatures, vide memo, Ex.PW12/A. The photographs taken by the I.O. from his personal camera, were proved as Ex.PX/1 to 7, with the negatives as Ex.PY/1 to 7. The report of the Crime Team, who had conducted an inspection of the place of occurrence, was marked as Ex.PW13/D. The marriage card of the deceased, Walli with the accused, handed over by PW-4 to the I.O. on 20.01.2000, was marked as Ex.PW4/D.

8. PW-13 deposed that despite efforts made by him to trace the accused, he could not be arrested as he was absconding. The accused was finally arrested from his native place in District Vellupuram, Tamil Nadu on execution of NBWs issued against him. The personal search memo and the arrest memo of the accused are marked as Ex.PW6/A and PW13/E. The disclosure statement of the accused was proved and marked as Ex.PW13/F. His transit remand application moved by the I.O.

and allowed by the local Magistrate was proved and marked as Ex.PW13/G. Thereafter, the accused was produced by the I.O. before the learned Metropolitan Magistrate in Delhi and sent to judicial custody. Constable Sajjan Singh (PW-6), who had accompanied the I.O. from Delhi to Tamil Nadu, where the accused was arrested from his house, also deposed on the above lines.

9. The deposition of the father of the deceased, Kalrayan (PW-4), whose statement was recorded with the help of the translator, Shri Balmurgan (PW-5), is of importance. He narrated how on 17.01.2000, at about 5:30 AM, he went to the jhuggi of his daughter, Walli, that is situated near his own jhuggi to wake her up; that he had seen the appellant coming out of the jhuggi with a bag; the appellant was at a distance of 20 feet from the jhuggi and on seeing PW-4, he had run away. PW-4 deposed that when he entered Walli's jhuggi, he found his daughter lying dead with a rope tied around her neck. He stated that before entering the jhuggi, he had asked the appellant as to where he was going, but he ran away. On raising a noise, the neighbours in the Madrasi Camp had gathered at the spot and Silve Raj (PW-3), who was the Pradhan of the Camp, called up the police. Rest of the deposition of PW-4 relates to the removal of the dead body of Walli to the Hospital, identification of her dead body on his statement (Ex.PW4/B), recording of his two statements by the police, marked as Ex.PW4/A and PW4/C. The marriage card of Walli with the appellant handed over by PW-4 to the police is marked as Ex.PW4/D. He also identified the ligature material (Ex.P-1) on opening of the sealed parcel bearing the seal of AIIMS in court. During his extensive cross-examination, he had stated

that the appellant had demanded a sum of Rs.1,000/- from him as he wanted to go to his native place in Tamil Nadu to celebrate the Pongal festival; that the day of the incident was the day on which Pongal was being celebrated. PW-4 denied the suggestion that on the date of the incident, the appellant was not in Delhi or that he had left Delhi for his native place on 10.01.2000, after a quarrel had taken place with the deceased.

10. Shri Balmurgan (PW-5), the interpreter, who interpreted the testimony of PW-4, certified the same as Ex.PW4/A. He also identified the dead body in his statement, Ex.PW5/A and proved his statement recorded by the SDM in the Hospital as Ex.PW5/B.

11. The other material public witness is Silve Raj (PW-3), the Pradhan of the jhuggis at the Madrasi Camp, who had called up the police and informed them about the murder of Walli on 17.01.2000. The said witness however turned hostile while testifying before the court on 24.05.2001. He had initially stated that the incident had taken place on 14.01.2000, but later on corrected himself and confirmed that it had happened on 17.01.2000. He denied that he had stated to the police that the appellant was a habitual drunkard, used to beat up Walli and demand money from her for consuming liquor. He also denied that on the previous evening, there was a quarrel between the appellant and his wife, which was settled by Kalrayan (PW-4). Instead, PW-3 deposed that he did not know as to when the accused had got married to Walli and that he had seen him for the first time in the Police Station upon his arrest. He claimed that whatever he had stated to the police was on the basis of what was told to him by Kalrayan. He denied having any knowledge of

the daily routine of Walli or of seeing the appellant and his wife quarrelling.

12. Coming to the forensic evidence, Dr. Parshant Kulshrestha, Senior Resident, Department of Forensic Medicine, AIIMS (PW-10) who had conducted the post mortem on the body of the deceased, proved the same as Ex.PW10/A. The post mortem was conducted on 17.01.2000 at 3:30 PM and concluded at 4:25 PM. The time since death was mentioned in the report to be about 12-15 hours prior to the post mortem. The cause of the death was recorded as *“asphyxia as a result of ligature strangulation”*. The report stated that *“a thread probably of nylon and about 0.5-1 cm diameter alongwith a bead like structure was seen around the neck with ligature marks placed around the neck 6 cm from chin in anterior midline”*. No other external injury was noticed over the body.

13. Though the appellant was given an opportunity to lead evidence, he did not do so. In his statement recorded under Section 313 Cr.P.C., the appellant stated that his marriage had taken place with Walli on 30.09.1996, at his native place and immediately after the marriage, she was brought back to Delhi by her parents and that she was working as a domestic help and was earning whereas he had continued to stay at his native village and cultivate land. The appellant further stated that he came to Delhi only in March, 1999; that he was unfamiliar with hindi language; that he was working with a package manufacturing company and was earning sufficiently; that his father-in-law was running a tea shop at his jhuggi and was also selling illicit liquor from there. The appellant claimed that he had some misunderstanding with his father-in-

law in relation to his business of selling illicit liquor and that his wife was also against this. Lastly, he stated that at the end of December, he had gone back from Delhi to his native village as he was unable to bear the severe cold.

14. Based on the testimony of the witnesses, in particular, father of the deceased, Kalrayan (PW-4), the trial court held that the appellant used to harass his wife for money for meeting his wayward ways and was responsible for her death. As a result, the appellant was convicted for the murder of his wife under Section 302 IPC.

15. Ms. Rakhi Dubey, learned counsel for the appellant has assailed the impugned judgment on the ground that the present case is based purely on circumstantial evidence and the learned ASJ has wrongly arrived at the conclusion that every link in the chain of circumstantial evidence was complete. She argued that the father of the deceased (PW-4) is an interested party and the trial court has erred in convicting the appellant solely on his testimony. Referring to his deposition, learned counsel stated that PW-4 was not even a witness to the crime. He claimed to have only seen the appellant escaping from the jhuggi in the early hours of 17.01.2000. She canvassed that during the extreme winter season in Delhi in the month of January, 2000, it would have been too dark in the early hours for PW-4 to have recognized the appellant and that too in dim light. She referred to the cross-examination of PW-4, wherein he admitted to the fact that there was no electric pole outside jhuggi No.2. She referred to the scaled site plan that records that the distance between point 'B' where PW-4 was standing and had claimed to have seen the accused fleeing to point 'C', which was at a distance of

7.10 meters (i.e., approximately 23 feet) and argued that this was a considerable distance for him to have recognized the accused and that too before daybreak. Learned counsel submitted that except for PW-4, there is no other witness produced by the prosecution to inculcate the appellant who was not present in Delhi at the time of the crime as he had gone back to his native village.

16. Per contra, Mr. Amit Gupta, learned APP has supported the impugned judgment and argued that PW-4 cannot be discredited simply because he happens to be the father of the deceased; that his statement was very natural and logical; that it was not unnatural for PW-4 to have woken up in the early hours on 17.01.2000, in view of the nature of his work that entailed preparing food articles and selling them to the residents in the neighbourhood. Learned APP also pointed out the discrepancy in the statement of the accused recorded under Section 313 Cr.PC, wherein he had stated that he had left from Delhi in December, 1999 whereas, during his cross-examination, it was suggested by the defence counsel to PW-4 that the appellant had left Delhi on 10.01.2000.

17. We have carefully examined the trial court record, perused the testimony of the witnesses and the medical and FSL evidence and given our thoughtful consideration to the arguments advanced by both sides.

18. Before embarking on examining the evidence brought on record, it may be noted that there is no direct evidence in the present case to connect the accused with the offence in question and the case of the prosecution rests solely on circumstantial evidence. Keeping this aspect in mind, it is necessary to state the law relating to circumstantial evidence. It is well settled that in a case of circumstantial evidence, the

cumulative effect of all the circumstances proved, must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. [Refer: Prem Thakur vs. State of Punjab; **1983 Cri.LJ 155**, Ram Avtar vs. State (Delhi Administration); **1985 Cri.LJ 1865** and State of Tamil Nadu vs. Rajendran; **AIR 1999 SC 3535**]

19. In Padala Veera Reddy vs. State of Andhra Pradesh and Ors. reported as **1989 Supp (2) SCC 706**, the Supreme Court had laid down the tests that must be satisfied in a case that rests upon circumstantial evidence as follows:-

“10. Before advertng to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:-

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

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

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

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

20. Keeping in mind the aforesaid principles of law, we shall now proceed to examine the relevant circumstances that are appearing in the present case.

21. The uncontroverted facts of the case are that the accused and his wife, Walli used to live under a common roof; that the jhuggi of Kalrayan (PW-4), father of the deceased was situated very close to the jhuggi of the accused; that Walli was found dead by PW-4 in her jhuggi at 5:30 AM on 17.01.2000; that the cause of her death was “*asphyxia as a result of ligature strangulation*”; that the ligature material was a yellow nylon rope found tied around her neck. The postmortem report (Ex.PW10/A) mentions that no other injury was noticed on the dead body. The prosecution has convincingly established that the death of the deceased was caused due to strangulation and the ligature material was a yellow nylon rope (Ex.P-1). It is therefore, a clear case of murder.

22. The next important question is as to whether the circumstances attending the case establish the guilt of the accused satisfactorily and unerringly so as to incriminate him with the crime of murder. The prosecution has heavily relied on the sole testimony of PW-4, Kalrayan, father of the deceased and has sought to draw an inference against the guilt of the appellant on the following circumstances:-

- (i) That the accused used to frequently fight with the deceased, Walli;
- (ii) One day before the date of the incident, the accused had quarreled with his father-in-law and demanded a sum of Rs.1,000/- to go to his native village to celebrate Pongal;
- (iii) That in the early hours of 17.01.2000, when PW-4 had gone to the jhuggi of Walli to wake her up, he had found her lying dead on the

floor and had seen the accused coming out of the jhuggi with a bag;

- (iv) That the accused had absconded after the incident and could not be traced by the police till he was arrested from his native village in Tamil Nadu, after several months, on 26.05.2000.

23. According to the learned APP, the aforesaid circumstances when seen collectively, unerringly prove that it was the appellant and none else who had committed the murder of his wife. The prosecution wants us to infer that Walli was killed by the accused, who was a jobless drunkard, used to harass her and demand money from her and her father. Reference has also been made to the quarrel that had taken place between the accused and PW-4 the night before the incident.

24. Coming first to the argument advanced by learned defence counsel that PW-4 stands discredited as he is an interested witness, it is a well settled rule of prudence that the evidence of a related or interested witness should be examined very meticulously. In circumstances where the related/interested witness has some enmity with the accused, then the yardstick for evaluating his evidence should be more stringent and the scrutiny, doubly so. The law with regard to appreciation of evidence of a related and/or interested witness has been explained by the Supreme Court in Dalip Singh vs. State of Punjab reported as **1954 SCR 145**, in the following words:-

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and

falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation, is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

25. In Darya Singh vs. State of Punjab reported as **AIR 1965 SC 328**, this is what the Supreme Court had to say on evaluation of evidence of an interested witness:-

“6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it.....It may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may

*name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. **On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.***” (emphasis added)

26. In Sarwan Singh v. State of Punjab reported as (1976) 4 SCC 369, the Supreme Court held as under:-

"10.The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth, such evidence could be relied upon even without corroboration."

27. In Kartik Malhar vs. State of Bihar reported as (1996) 1 SCC 614, the Supreme Court opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term “interested” postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

28. In Seeman alias Veeranam vs. State reported as (2005) 11 SCC 142, the aforesaid legal position was explained by the Supreme Court in the following manner:-

“4. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of

the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested sole witness. The prosecution's non-production of one independent witness who has been named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement." (emphasis added)

29. In Jayabalan v. UT of Pondicherry reported as (2010) 1 SCC 199, once again, the Supreme Court highlighted the caution required to be taken in appreciating the evidence given by the interested witness as under:-

"23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency." (emphasis added)

30. In Waman v. State of Maharashtra reported as (2011) 7 SCC 295, while dealing with the case of related witness, the Supreme Court summarized the law in the following words:-

"20. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a

witness and the courts have to scrutinize their evidence meticulously with a little care.” (emphasis added)

31. We may also profitably refer to Raju vs. State of Tamil Nadu reported as (2012) 12 SCC 701 where the Supreme Court held as follows:-

“24. For the time being, we are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.” (emphasis added)

32. A glance at the above decisions makes it clear that the evidence of an interested and/or related witnesses should not be examined with a coloured vision simply because of their relationship with the deceased. Though it is not a rule of law, it is a rule of prudence that their evidence ought to be examined with greater care and caution to ensure that it does not suffer from any infirmity. The court must satisfy itself that the evidence of the interested witness has a ring of truth. Only if there are no contradictions and the testimony of the related/interested witness is found to be credible, consistent and reasonable, can it be relied upon even

without any corroboration. At the end of the day, each case must be examined on its own facts. There cannot be any sweeping generalisation.

33. In our view, in the instant case, a mere fight between the accused and PW-4 on the day before the incident over a paltry sum of Rs.1,000/-, cannot be treated as an acceptable evidence to prove that there was a serious quarrel between the accused and his wife to the point that he would have killed her. PW-4 alone has deposed about the accused being a wayward person and demanding money from his wife for his own expenses. In his statement recorded under Section 313 Cr.PC, the appellant has described his father-in-law, PW-4 as a bootlegger and on his part, PW-4 stated during his cross-examination that the accused was a drunkard and had once caused injuries on his head, while under the influence of liquor. Except for PW-4, there is no independent witness who has deposed about the ill-treatment allegedly meted out by the accused to the deceased.

34. On the other hand, PW-3, the public witness cited by the prosecution had resiled from his statement made to the police relating to the nature of the relationship between the accused and the deceased. The said witness denied the fact that frequent quarrels used to take place between the couple or that the accused was a drunkard. He also denied a suggestion made to him by the prosecution counsel that the accused was jobless or that on the evening previous to the incident, there was a quarrel between the accused and his wife, which had been settled by Kalrayan. In fact, Kalrayan himself did not state anything to this effect in his testimony. Instead, he had stated that the accused had demanded a sum of Rs.1,000/- from him to go to the village to celebrate Pongal. No

reference was made by him to any quarrel that had taken place between the accused and the deceased on the eve of 17.1.2000, for attributing any sinister motives to him, for taking the life of his wife.

35. We also find merit in the submission made by learned defence counsel that it would have been well-nigh impossible for PW-4, who was admittedly standing at a distance of about 23 feet from the point where he had allegedly seen the accused fleeing away at 5.30am on 17.1.2000, to have recognized him from his silhouette and that too at the crack of dawn during the winter season, in the absence of any streetlight outside the jhuggi of the deceased. In his deposition, PW-4 admits to the fact that there was some darkness and there was no lamp post outside the jhuggi. Normally, Delhi winters are characterized by the presence of a haze at daybreak which can obscure visibility, more so in the absence of any street light. Even if it is assumed that there was no fog at the wee hours, the weather is ordinarily frosty at that time, lending opalescence to the air and a blurred view. Assuming that the contours of a human body could have been visible to PW-4 at a distance of 23 feet, it is doubtful that the face would have been so clearly delineated in the dim light as to unerringly identify the assailant. Learned defence counsel is therefore justified in stating that in the above circumstances, the singular deposition of PW-4, without any independent corroboration cannot lead to an irresistible inference that the accused alone could have committed the crime.

36. No doubt, the life of a 23 year old young girl has been abruptly extinguished in this case, but the pivotal issue remains as to whether the totality of the circumstances unerringly point a finger at the accused as

the real culprit and none else. The circumstances indicated by the learned APP do create a suspicion against the accused but the point is whether those circumstances would be sufficient to hold that he was guilty of this crime. In our opinion, the distance between “*may be true*” and “*must be true*” has not been satisfactorily traversed by the prosecution to establish an unbroken link between the accused and the crime. One must be mindful of the fact that no one can be convicted on the basis of a mere suspicion however strong such a suspicion may be. [Refer: Palvinder Kaur vs. State of Punjab AIR 1952 SC 354; Chandrakant Ganpat Sovitkar vs. State of Maharashtra (1975) 3 SCC 16; Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116; Padala Veera Reddy (supra) and State of Uttar Pradesh vs. Wasif Haider & Ors. 2018 SCC OnLine SC 2740]

37. We are therefore of the view that the circumstances appearing in the present case when examined in the light of the above legal principles, do not lead to an inevitable and decisive conclusion that the appellant had committed the murder of his wife, Walli. As the prosecution has not been able to dispel the cloud of doubt as to the culpability of the appellant, we are inclined to extend him the benefit of doubt. Resultantly, the present appeal succeeds. The impugned judgment of conviction and order on sentence, both dated 31.5.2003 are quashed and set aside.

38. A perusal of the nominal roll of the appellant placed on the record reveals that as on 10.05.2007, he had remained in custody for a period of six years, eleven months and ten days and had earned remission for a period of eight months and fifteen days. The appellant’s sentence was

suspended vide order dated 16.5.2007. Unless he is wanted in some other case, the appellant is set free, subject to his fulfilling the requirements of Section 437(A) of the Cr.P.C. to the satisfaction of the trial court at the earliest. The trial court record be returned alongwith a copy of this judgment.

(HIMA KOHLI)
JUDGE

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 12, 2019
rkb/ap/sk