

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

Reserved on : 19.12.2018

Date of Decision : 25.02.2019

+ CRL.A. 146/2004

SUNIL DUGGAL & ORS.

..... Appellants

Through Mr. Nitin Sehgal, Advocate &
Mr. Ashok Soni, Advocate

versus

STATE

..... Respondent

Through Mr. Amit Gupta, APP

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. Three appellants had jointly filed the present appeal against the impugned judgment dated 11.02.2004, passed by the learned Addl. Sessions Judge, Delhi in Sessions Case No.86/90, arising out of FIR No.82/89, registered at Police Station Nabi Karim, Delhi, convicting them for the murder of Sushma, sister-in-law of appellant no.1, daughter-in-law of appellant no.2 and wife of appellant no.3 punishable under Sections 302/34 IPC and Sections 498-A/34 IPC. As per the order on sentence dated 13.02.2004, the appellants were sentenced to undergo imprisonment for life with a fine of Rs.15,000/- each and in default of payment of fine, to

further undergo R.I. for six months under Section 302/34 IPC. The appellants were also sentenced to undergo R.I. for three years under Section 498-A/34 IPC with fine of Rs.5,000/- each and in default of payment of fine, to further undergo R.I. for four months. The fourth accused, Subhash Duggal was acquitted of all the charges framed against him. The fifth accused Mahender Nath Duggal had expired during the trial. During the pendency of the present appeal, the appellant No.2, i.e., Asha Rani Duggal also expired on 17.01.2014 and vide order dated 29.05.2014, it was recorded that the appeal stands abated qua the said appellant. Now the present appeal is confined to the appellant No.1 and appellant No.3 only.

2. As per the prosecution case, Krishan Kumar Chopra, complainant in the present case had brought up Sushma, an orphan and got her married to the appellant no.3, Ajay Duggal. On 13.03.1989, Krishan Kumar Chopra received a call from Sunil Duggal informing him that Sushma had expired. He reached the matrimonial home of his niece and found her dead body on a dirty sheet near the bathroom. He also noticed some marks on the neck of the deceased and it appeared to him that Sushma had been strangled. In the meantime, information was also received at the local Police Station from the PCR at about 11:45 am to the effect that a lady has

been poisoned to death in House No. AB-236, Amar Puri, Nabi Karim, Delhi. The said information was recorded as DD 19A (Ex.PW-1/E). SI Jagjit Singh (PW-42) and HC Hari Singh (PW-4) reached the spot. Simultaneously, Inspector Tulshi Ram (PW-43) also reached the spot. As the death had occurred within one year of the marriage, SDM, Punjabi Bagh, Mr. Vipul Mittra (PW-28) was called at the spot, who recorded the statement of Mr. Krishan Kumar Chopra (Ex.PW-1/A and Ex.PW-43/A). Inspector Tulshi Ram (PW-43) made his endorsement and the rukka was sent through HC Hasmat Khan (PW-18) to the Police Station for registration of a FIR against all the appellants under Section 302 and 498-A IPC.

3. Investigation was carried out. Inspector Tulshi Ram (PW-43) prepared the unscaled site plan (Ex.PW-43/B). The Investigating officer lifted samples from the spot for analysis which included a lady's brown coloured shirt and salwar, synthetic brassiere and a light blue coloured *chunni*. The dead body of Sushma was sent for post mortem which was conducted at 9:30 am on 14.03.1989. The post mortem report (Ex.PW-31/A) opined that the cause of death was "*death due to asphyxia resulting from strangulation*". In the meantime, the appellants and the other co-accused were arrested.

4. In order to prove its case, the prosecution examined 45 witnesses in all. The material witnesses included Krishan Kumar Chopra, uncle of the deceased (PW-3); Rajinder Kumar Chopra, cousin of the deceased (PW-6); Surender Kumar Chopra, cousin of the deceased (PW-20); Minakshi, sister of the deceased (PW-34); Shamma Chopra, sister-in-law of the deceased (PW-21) and Goverdhan Malhotra, uncle of the deceased (PW-9). Another witness, Sunder Dass Malhotra was examined as PW-8. However, his testimony could not be completed and he was never offered for cross-examination. The prosecution also examined N.K. Sharma (PW-15), Mangal Singh (PW-16), Ramesh Kumar (PW-19), Rakesh Kapoor (PW-25), Raj Kapoor (PW-26) and Krishan Kumar Chopra (PW-3) to prove the factum of the marriage of Sushma with Ajay Duggal as well as the articles that were purchased and given at the time of the marriage. Two neighbors, namely, Ganga Bassi and Richhapal Singh were examined as PW-40 and PW-41 respectively.

5. The scaled site plan was proved by Inspector Devinder Singh (PW-32). Dr. J.K. Gupta, who had examined the deceased at the first instance, was examined as PW-5. Dr. Atul Jain, a Consultant with Sanjeevan Nursing Home, who had examined the deceased, Sushma on 13.03.1989, at 1:30 p.m. was examined as PW-38 but he turned hostile. The Post

Mortem Report was proved by Dr. R.P. Saraswat (PW-31) and Dr. D.N. Sharma (PW-39). Dr. S.C. Mittal (PW-44) had given his opinion on handwriting on the letters allegedly stated to have been sent by Sushma to her uncle. The Trial Court, however, did not place any reliance on the said letters. Sh. C.K. Jain, Sr. Scientific Officer, CFSL (PW-45) proved his opinion about the *chunni* (Ex.PY). Insp. Tej Rani, from CAW Cell was examined as PW-33 and Insp. Tulshi Ram, Investigating Officer, was examined as PW-43. The accused also examined two witnesses in their defence. Initially, joint statements of the appellants were recorded under Section 313 Cr.PC. However, subsequently, separate statements of each of the appellants were recorded under Section 313 Cr.PC wherein they claimed innocence and false implication in the case.

6. Arguments were heard from both the sides. Mr. Nitin Sehgal, Ld. counsel for the appellant has contended that Mr. Vipul Mittra, SDM (PW-28) gave directions for registration of the FIR even before completing the inquest proceedings which have resulted in causing grave prejudice to the appellants; that there are no specifics as to who demanded the dowry and when the said demands were made; that there is no evidence of any dowry given at the time of the marriage; that the complaint of the deceased with the CAW Cell and the subsequent compromise arrived at between the

parties is silent about any alleged demand of Rs.10,000/- or scooter; that there was no allegation of any demand made after the compromise; that the medical evidence, as far as ligature mark is concerned, is contrary to the prosecution case; that strangulation can be a result of either suicide or homicide; that the conduct of the appellant No.3, Ajay Duggal of attending a lunch hosted a day prior to the death of Sushma shows that the relation between them was not strained; that the conduct of the appellant No.1 of calling the Doctor on seeing the condition of Sushma runs contrary to the prosecution case; that there have been contradictions and improvements in the statements of the prosecution witnesses; that even if the appellants had not been able to explain the circumstances of the death of Sushma that had occurred within their house, Section 106 of the Indian Evidence Act cannot be invoked; that there was delay in registration of the FIR and that the accused/appellants have been falsely implicated in the present case. Relying on the testimonies of PW-40 and PW-41, it was further argued that the appellants were not present at the spot at the time of commission of the alleged murder and that since the plea of alibi taken by the other accused, Subhash Duggal was accepted by the Trial Court, the appellants ought to have been given the benefit of the said plea. In support of his pleas, learned counsel for the appellants has relied on the judgments in ***Narender Singh Arora vs. State (Govt. of NCT Delhi) & Ors. (2010) 173***

DLT 244; State vs. Naved UR Rehman (2016) 229 DLT 711; Mohd. Wakil vs. State 2018 SCC Online Del 11242 and Suhaib Ilyasi vs. State 2018 SCC Online Del 11654

7. On the other hand, Mr. Amit Gupta, Ld. APP for the State strongly supported the impugned judgement passed by the learned Trial Court and prayed for dismissal of the appeal. In support of his submissions, he had relied on ***Trimukh Maroti Kirkan vs. State of Maharashtra (2006) 10 SCC 681.***

Analysis

8. The present case is based on circumstantial evidence. The facts which have not been disputed are as follows:

- (i) The marriage between Ajay Duggal and Sushma was solemnized on 19.04.1988.
- (ii) After the marriage, Sushma stayed at her matrimonial home i.e. at House No. AB-236, Amar Puri, Nabi Karim, Delhi.
- (iii) The appellants were residing jointly in the above house.
- (iv) On 13.03.1989, Sushma expired at her above matrimonial home.

9. The prosecution has cited demands of dowry by the appellants as a reason for the continuous harassment of Sushma due to which she had ultimately filed a complaint against them before the CAW Cell.

Demand of dowry and harassment

10 Krishan Kumar Chopra, uncle of the deceased was examined as PW-3. He deposed that Sushma was the daughter of his sister-in-law. She was living with him since the year 1986, on the demise of her parents. They had got her married to Ajay Duggal on 19.04.1988. At the time of the marriage, he had given dowry with contribution made by other relatives. Everything was normal for the initial 2-3 months. When PW-3 asked Sushma about the reason of her unhappiness, she told him that her in-laws were demanding dowry. She was also beaten by all the appellants for not bringing a scooter and VCR. He made attempts to reconcile the dispute between the couple but the harassment of Sushma had continued. He further deposed that Sushma had filed a complaint before the CAW Cell on 20.10.1988 and after 4-5 hearings, a compromise (Ex.PW-3/DA) was arrived at between the parties with the intervention of relatives. Even thereafter, the harassment of Sushma had continued at the hands of all the appellants. On 11.03.1989, Sushma came to his house and narrated her ordeal that she was locked in a room, without any food and was beaten

quite often. On 12.03.1989, a lunch had been organised at the house of a relative. Ajay came to attend the lunch and while going back, took Sushma along with him despite her unwillingness to accompany him. On the very next day, i.e. on 13.03.1989, the witness was informed by the appellant no.1, Sunil Duggal that Sushma had expired. When he reached Sushma's house, he found her body lying on a dirty sheet near the bathroom. He also noticed some injury marks around the neck of Sushma. He proved his statement made to the SDM as Ex.PW-3/D. In his cross-examination, not a single question was put to him that no dowry articles were given at the time of Sushma's marriage. The confrontation was with respect to the demand of a VCR but not for the demand of scooter or cash of Rs.10,000/-.

11. The deposition of the other witnesses i.e. PW-6, PW-9, PW-20, PW-21 and PW-34 is cumulative to the deposition of PW-3, on all material aspects. PW-20 proved his earlier statement made to the police, as Ex. PW-20/DA, where demands of scooter and cash were mentioned. PW-34 was confronted with her earlier statement made to the police (Ex. PW-34/DA) where demand for a scooter was mentioned. All the witnesses consistently stated that there was a demand of Rs.10,000/- and a scooter by the appellants. Though PW-6 mentioned the amount as Rs.25,000/- and

PW-34 did not mention the specific amount that had been demanded, these can hardly be treated as major contradictions in the testimonies.

Complaint dated 20.10.1988.

12. The complaint filed by Sushma (Ex.PW-33/A and Ex.PW-44/B) was proved by Inspector Tej Rani, who appeared as PW-33. In the said complaint, Sushma had named all the appellants at whose hands she was being harassed for not bringing more dowry. It was also mentioned that she was threatened, locked and beaten in a room and kept hungry for 2-3 days. She stated that the appellant no.3, Ajay had threatened to divorce her. She described as to how the appellants never wanted to send her on her sister's marriage fixed for 18.10.1988. She concluded by stating that she apprehended a threat to her life from all the appellants, especially from Sunil Duggal and Subhash Duggal. Enclosed with the complaint was a list of articles (Ex.PW-3/A) given to the appellants at the time of Sushma's marriage with Ajay Duggal.

13. With reference to the complaint and the subsequent compromise dated 13.11.1988 (Ex.PW-3/DA), the prosecution had examined Darbari Lal Chandhu as PW-30, who deposed that he was an uncle of one Som Nath, a friend of both the appellant Nos. 1 and 3. PW-30 deposed that both the appellants had approached him and informed him about the dispute

pending in the Dowry Cell. Due to his intervention, the said dispute pending in the Dowry Cell was resolved in November, 1988 and he requested the appellants to keep Sushma nicely. In his cross-examination, PW-30 denied the suggestion made that the appellants never approached him.

14. Insp. Tej Rani who had investigated the complaint filed by Sushma in the CAW Cell, was examined as PW-33. She deposed that the compromise between Ajay Duggal and Sushma was filed before her. In her cross examination, a suggestion given to the witness that no such complaint was received in the CAW Cell, was denied by her. In fact, Kanta Devi, a defence witness, while appearing as DW-1, also confirmed that a complaint was lodged by Sushma in the Dowry Cell which was resolved amicably. Even the appellants, during their examination under Section 313 Cr.PC, while answering question No.34 had replied that though Krishan Kumar Chopra (PW-3) had filed a complaint but Sushma had on her own, gone to the CAW Cell and withdrawn the said complaint. It is noteworthy that no such suggestion was given by the accused either to Krishan Kumar Chopra or to any other witness during the cross-examination.

15. From the testimonies of the witnesses and the complaint filed before the CAW Cell, it stands established that Sushma was tortured and harassed for dowry by the appellants.

Conduct of the appellants

16. The prosecution has also relied upon the conduct of the appellants especially appellant no.3 towards Sushma and her family to prove that they were not happy as their demand for dowry had not been fulfilled by the deceased and her family members.

i) Marriage of the victim's sister, Minakshi on 18.10.1988

17. In her above complaint to CAW Cell, Sushma had also mentioned about the fact that none of her in-laws attended the marriage of her sister, Minakshi. The marriage of Minakshi, sister of Sushma was solemnized on 18.10.1988. From the evidence on record, it is established that Sushma came to her uncle's house on 13.10.1988 to attend the marriage of her sister. Neither the appellants, nor anyone from their family had attended the said marriage. It was Sushma's family that had taken her to attend the marriage. After attending the marriage, Sushma came back to her uncle's house. Had Ajay Duggal or his family members attended the marriage, Sushma would not have returned to her uncle's house. Rather, she would have gone to her matrimonial home. In these circumstances, Sushma filed

the complaint before the CAW Cell on 20.10.1988, two days after the marriage of her sister.

ii) Lunch organized on 12.03.1989

18. PW-3, Krishan Kumar Chopra deposed that Sushma had come to his house on 11.03.1989, on which date she told him that the appellants used to confine her in a room and not even provide her food. She was treated worse than a servant. She also stated about the beatings given to her by the appellants.

19. From the testimonies of PW-3, PW-6, PW-9, PW-20, PW-21 and PW-34, it is borne out that on 12.03.1989, the appellant no.3, Ajay Duggal was invited to attend a lunch at the house of one Rakesh Gera, a person known to the family of Sushma. As per the testimony of Shamma Chopra, (PW-21) initially, Sushma had informed her that her husband, Ajay Duggal would not be attending the lunch however, later on, he came and while going back, took Sushma along with him to her matrimonial home.

20. It was contended by Mr. Nitin Sehgal, Ld. defence counsel that as appellant no.2, Ajay had attended the said lunch, it clearly indicated that the relation between him and Sushma was normal till a day prior to her death. In our opinion, such an inference cannot be drawn especially in

view of the testimonies of the witnesses who in unison deposed that Sushma was being continuously harassed for not fulfilling the demand of a sum of Rs.10,000/- and a scooter which had led her to file a complaint before the CAW Cell on 20.10.1988 and also in view of the conduct of the appellant no.3, Ajay Duggal and his family members in not attending the marriage of Minakshi, sister of Sushma on 18.10.1988.

Whether the death of Sushma was a suicide or homicide:

21. It is undisputed fact that Sushma had died an unnatural death on 13.03.1989, in her matrimonial home. PW-3, Krishan Kumar Chopra has deposed that he received a call from the appellant no.1, Sunil Duggal on 13.03.1989 that Sushma had expired. When he reached the house of the appellant at about 12:40 p.m., the police had already arrived there. He noticed injury marks on the neck of the deceased. The presence of ligature mark on the neck of the deceased was also mentioned by the relatives of the deceased, namely, PW-3, PW-6, PW-9, PW-20, PW-21 & PW-34. Besides the family members, mark on the neck of the deceased was also noticed by HC Rekha Rani (PW-17) and HC Hasmat Khan (PW-18). While PW-17 was not cross-examined at all, no question was put to PW-18 in this regard during his cross-examination. Rakesh Kapoor (PW-25), a friend of Sunil Duggal who had attended the marriage of Ajay Duggal

and Sushma had deposed about Sushma found lying dead in the courtyard with some mark on her neck. This witness was also not cross-examined by the appellants.

22. The appellants had taken shifting stands as to the nature and cause of Sushma's death during the trial and while arguing the present appeal.

23. During the trial, while cross-examining the prosecution witnesses and specifically answering question no.28 in their examination under Section 313 of Cr.PC, the appellants had maintained that Sushma had died a natural death. The trial court found this stand to be contrary to the Post Mortem Report. The post mortem was conducted by Dr. D.N. Sharma (PW-39). As per the said Post Mortem Report, the cause of death was due to asphyxia resulting from strangulation. The Post Mortem Report was also proved by Dr. R.P. Saraswat (PW-31). The said Post Mortem Report also opined that the light blue coloured *chunni*, which was seized, might have been used as the ligature material. Mr. C.K. Jain, Sr. Scientific Officer, CFSL (PW-45) vide his report (Ex-PY) had also opined that the *chunni* was long and strong enough and hence the same could have been used for strangulation. The Post Mortem Report and the CFSL Report are reproduced below for ready reference:

The following external injuries were observed in the Post Mortem Report (Ex.PW31/A):-

(i) *A ligature mark present around the neck which is passing first on thyroid area and then passing on right side neck, less horizontally upto middle of sternomastoid muscle and then going slightly upward and back-ward touching the hair line at the middle of back and then the ligature mark is continuous on the left side of the neck in the form of an impression (without abrasion of the surface skin). Ligature impression on the left side of the neck is passing 2 cms below the submandibular border and is at a higher level (as compared to its right side). Colour of ligature mark where it is prominent that is on right side and front of neck is dark brown in colour and there is no grooving of skin at the base of ligature.*

(ii) *Bruise 1 inch x 1/2 inch on the posterior aspect of left elbow on radial head of the back surface clotted blood present in the soft tissue. There is no other mark of violence seen on the body.*

Injuries are ante-mortem. Injury No.1. is caused by a ligature during process of strangulation. No.2. injury is caused by blunt impact. Death is due to asphyxia resulting from strangulation.

Time since death about 24 hours.

Chhuni of light blue colour was produced before Dr. D.N. Sharma to seek his opinion whether ligature mark was possible by the said chhuni. Dr. Sharma opined that chhuni might have been used as ligature material and opinion is contained in postmortem report itself.

The CFSL Report (Ex-PY) noted the following:-

“The scientific examination of the chunni marked Ex.1d reveals that it is long and strong enough. Hence, the same could be used for strangulation.”

24. In the present appeal, Ld. counsel for the appellants has sought to change the stand as to the nature and cause of death of Sushma. He has contended that the strangulation can be explained, as according to him, Sushma had committed suicide by hanging herself. He placed reliance on the decision in **Mohd. Wakil (supra)**, in support of the above plea.

25. We are of the view that this argument leads nowhere. Strangulation and hanging are two completely different causes of death. The Post Mortem Report has specifically opined that the cause of death of Sushma was strangulation and not hanging. In ‘**MODI A Text Book of Medical Jurisprudence And Toxicology**’, 24th Edition, Chapter 13 Page 456, the difference between hanging and strangulation has been defined as under:

<i>Hanging</i>	<i>Strangulation</i>
<i>Mostly suicidal</i>	<i>Mostly homicidal</i>

<i>Ligature mark-Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.</i>	<i>Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.</i>
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In the instant case, the ligature mark on the neck of the deceased was opined to be “continuous” in the Post Mortem Report thus leading to an inference that the death was on account of strangulation.

26. Reliance placed on **Mohd. Wakil’s (supra)** by the Ld. counsel for the appellants is also misplaced. In the captioned case, the body of the deceased was found hanging and was brought down by a witness. The doctor who had conducted the postmortem, was not aware of this fact and on the basis of the papers submitted by the police officials which noted it to be a case of strangulation, he had opined that the death was on account of strangulation. In the present case, the prosecution has nowhere stated that Sushma’s death had occurred on account of hanging. A perusal of the record shows that while forwarding an application requesting for post mortem (Ex. PW-28/D and 28/D1), the doctor was specifically asked to opine as to whether the death had occurred on account of strangulation, or hanging. Thus, in the postmortem report a specific opinion has been given that the death had occurred due to “*asphyxia resulting from strangulation*”. This opinion in the post mortem report was not challenged by the defence

and only one general suggestion was given to PW-39 to the effect that his opinion is not correct, which was denied. If they were so inclined, the appellants ought to have challenged the cause of death by asking specific questions to PW-39, who had conducted the postmortem examination, which they failed to do. On the contrary, throughout the trial, the stand of the appellants was to the effect that Sushma has died a natural death. It is noteworthy that in **Mohd. Wakil's case (supra)**, a co-ordinate Bench of this court has held that the question whether it is a case of suicide or homicide, should be left for the expert opinion and the Court should refrain from taking the task upon itself. Reliance placed by ld. counsel on the decisions in ***State vs. Naved UR Rehman (supra)***; ***Narender Singh Arora vs. State (Govt. of NCT of Delhi & Ors.) (supra)***; ***Dinesh Kumar & Ors. Vs. State NCT of Delhi 2014 SCC Online Del 4129*** is also misplaced as in those cases, the death had occurred on account of hanging and not on account of strangulation.

27. Faced with this anomaly, ld. counsel for the appellant has sought to argue that death could have occurred because of self-strangulation. Such a stand was neither taken before the trial court and not even suggested to the medical experts, PW-31 and PW-39 who had proved the Post Mortem Report. Thus, in view of the unchallenged testimony of PW-39 and PW-

31, we find that the prosecution has successfully proved that the death of Sushma has occurred due to “*asphyxia resulting from strangulation.*”

28. It was next contended that Sushma was alive when Dr J. K. Gupta (PW-5) had examined her and that the conduct of appellants in calling the doctor shows their innocence. PW-5 had deposed that on 13.03.1989, the appellant no. 1, Sunil Duggal came to his clinic and requested the witness to accompany him to check his *Bhabhi*. On reaching there, he found Sushma lying on a “sofa bed” and she had no pulse. Later, in his testimony, he stated that the pulse was feeble and he was not sure whether Sushma was alive or dead. He stayed at the spot only for 2-3 minutes and advised that Sushma be taken to a hospital. In the cross-examination, he stated that he could not say whether Sushma was alive at that time. From a reading of the testimony of PW-5 in totality, it cannot be concluded that when PW-5 examined Sushma, she was alive. Public had gathered and relatives of Sushma had also reached. Simply calling the doctor after the offence does not lead to any presumption of innocence of the appellants. On the contrary, the conduct of the appellants towards the deceased is writ large from the perusal of the testimonies of the witnesses. The deceased barely survived her marriage for one year.

29. Learned counsel for the appellants has next argued that the inquest proceedings were not properly conducted which has caused prejudice to the appellants. He contended that the inquest proceedings initially were conducted by Vipul Mittra, SDM (Punjabi Bagh) (PW-28), who recorded the statements of family members of the deceased. However, he did not put his own signatures on the said statements, allegedly in violation of Sections 176 Cr.PC and the said defect was later cured by H.C. Gaur (PW-29) who after a period of one year, had recalled the witnesses and recorded their statements afresh and completed the inquest proceedings. Assailing the inquest proceedings conducted in such a manner, learned counsel contended that non-conclusion of the said proceedings on 13.03.1989, when direction was given by the then SDM (PW-28) and endorsed by the I.O. for registration of the present case under Section 302 IPC, has caused serious prejudice to the appellants.

30. The purpose of inquest proceedings is merely to ascertain as to whether a person has died under unnatural circumstances and what was the cause of his/her death. The statements recorded by the SDM during the inquest proceedings is not a substantive piece of evidence but is only in the nature of a previous statement which can be used during the cross-examination of the witnesses for the purpose of highlighting

contradictions, if any, or discrediting them. As to the object of conducting the inquest proceedings, reference may be made to the decision of the Supreme Court in ***Pedda Narayana vs. State of A.P. (1975) 4 SCC 153*** where it was held as follows:-

“11. A perusal of this provision would clearly show that the object of the proceedings under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted appears to us to be foreign to the ambit and scope of the proceedings under Section 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police to have mentioned these details in the inquest report”.

31. The view in ***Pedda Narayana (supra)*** has been approved by a three-Judge Bench of the Supreme Court in ***Khuji vs. State of M.P. (1991) 3 SCC 627***. Reference in this regard is also made to the decisions of the Supreme Court in ***Suresh Rai and Ors vs. State of Bihar (2000) 4 SCC 84***; ***Manoj Kumar Sharma vs. State of Chhatisgarh and Anr. (2016) 9 SCC 1***; ***Yogesh Singh vs. Mahabeer Singh (2017) 11 SCC 195*** and ***Tehseen Poonawalla vs. Union of India (2018) 6 SCC 72***.

32. On a perusal of the Trial Court record, it is evident that PW-28 had recorded the statements of the relatives of the deceased namely, Krishan Kumar Chopra (uncle of the deceased), Minakshi (sister of the deceased), Sushil Kumar (brother-in-law of the deceased), Sunder Das (uncle of the

deceased) and Rakesh Kapoor (neighbor). Additionally, PW-28 had prepared brief facts (Ex.PW-28/B), Form 2535 (Ex.PW-28/C) and the postmortem application (Ex.PW-28/D). While sending the postmortem application, the witness had specifically asked the Civil Surgeon to opine as to whether the death had occurred on account of strangulation or hanging and also to examine the blue *chunni* in relation to the cause of the death. The special note written in this regard was exhibited as Ex.PW-28/D-1. The witness had clarified in the cross-examination that on the basis of the statement of Krishan Kumar Chopra and the position of the dead body, he was of the view that it was a case of murder. He also clarified that he had made an endorsement, without awaiting an opinion of the doctor, on the basis of circumstantial evidence available on the record coupled with the statement of Krishan Kumar Chopra and it was his self-assessment. We fail to see as to how this assessment of PW-28 has caused prejudice to the appellants as argued by Id. counsel for the appellants. On the contrary, the SDM (PW-28) had acted fairly in asking the Civil Surgeon to clarify as to whether the death had occurred on account of hanging or strangulation. The assessment made by the witness was even otherwise found to be correct, as on the very next day, the postmortem report opined that the death was on account of “*Asphyxia resulting from*

strangulation”. It is no longer *res integra* that even if the FIR is registered on the basis of evidence obtained illegally, yet the trial is not vitiated.

33. In terms of the opinion in the postmortem report which has given the cause of death as strangulation, we are of the opinion that the prosecution has successfully established the “commission of crime”, which is the basis for application of Section 106 of the Indian Evidence Act. The moment prosecution is able to prove that the death of Sushma was homicide that had occurred in the house of the appellants, the burden shifts under Section 106 of the Evidence Act on to them to explain the injuries on the body of Sushma and how she had died. In **Trimukh Maroti Kirkan vs. State of Maharashtra (supra)**, the Supreme Court held as under:

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties.

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden

would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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21. In a case based on circumstantial evidence where no eye-witness 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.

22. 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.”

(Emphasis added)

34. Reference is also made to ***Ganjan Dashrath Kharate vs. State of Maharashtra (2016) 4 SCC 604*** and ***Chandra Bhawan Singh vs. State of U.P. (2018) 6 SCC 670***. In **Chandra Bhawan's case** (supra), it was observed as under:-

“29. Coming to the involvement of the appellants in commission of the offence, we find that the High Court relied on the following

circumstances appearing against the Appellants for holding them guilty of commission of the offence of murder of Satyawati. These circumstances are extracted hereinbelow: (Tribhuwan Singh vs. State of U.P. (2014) SCC online All 15374)

“28. Here prosecution has discharged its part of the burden by leading evidence of which it was capable by substantiating the fact (i) that there has been demand of dowry (ii) deceased has been taken to her in laws house (iii) at the time of death, deceased has been staying with her in laws and Appellants are the inmates of the house (iv) death in question has taken place inside the house (v) injuries caused clearly reflects that it is case of murder (vi) story of suicide set up by Appellant No. 3 was not at all supported by medical evidence (vii) DBBL gun has been used in the commission of offence and once chain of events are clearly linked up then in view of Section 106 of Evidence Act, as young bride in question has been killed inside the house, then there is corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an Accused to offer any explanation. The principle is that when an incriminating circumstance is put to the Accused and the said Accused does not offer any explanation which on the face of it is found false or untrue, then the same becomes additional link in the chain of circumstances to make it complete.

30. In our considered opinion, the aforementioned seven circumstances set out by the High Court for holding the Appellants guilty cannot be faulted with. These seven circumstances do establish the chain of events and being directly connected with the incident in question, establish the involvement of the Appellants in commission of the offence beyond reasonable doubt. In our opinion, the test laid down to prove the guilt by circumstantial evidence in this case is fully satisfied by the aforementioned seven circumstances against the Appellants.

31. xxxx

32. *We also find that both the Accused (Appellants herein) in their statements recorded Under Section 313 of the Code of Criminal Procedure, 1973 failed to give any explanation when asked about the circumstances in which the incident occurred in their house. When the incident admittedly occurred in their house, the Appellants were required to explain the circumstances in which Satyawati died. They, however, failed to give any explanation”.*

35. Reliance placed by the learned counsel for the appellants on the decision in case of **Suhaib Ilyasi (supra)** is misplaced as it was held in para 208 (v) of the captioned case that:-

“Without the prosecution proving “commission of crime”, the question of shifting the burden to the appellant under Section 106 IEA to explain how death had occurred, does not arise.”

36. The appellants herein have miserably failed to discharge the burden put on them under S.106 Indian Evidence Act. The “commission of crime” i.e., death by strangulation (homicide) has been successfully proved by the prosecution. The appellants have not succeeded in discharging the burden cast on them under Section 106 of the Indian Evidence Act. The ever changing plea of the appellants as to the cause of death of Shushma, is also a circumstance which goes against them.

PLEA OF ALIBI

37. To urge that the appellants were not present in the house on 13.03.1989 when Sushma had allegedly committed suicide, ld. counsel for the appellant has placed reliance on the testimony of Ganga Bassi (PW-40) and Richhpal Singh (PW-41).

38. PW-40, a neighbor of the appellants, had sought to introduce altogether new facts during his testimony and was declared hostile. He had sought to introduce a plea of 'alibi' for both the appellants by stating that after bringing the body of Sushma down, he had gone to call the appellants from their shop. We find that neither such a plea was taken by any of the two appellants during the investigation, or the trial and nor was such a suggestion given to any of the material/police witnesses examined till then. In fact, such a defence was not even suggested by the appellants to the subsequent witnesses namely, PW-42 & PW-43, who were police witnesses and reached the spot at the first instance and had later investigated the case. Even during their examination under Section 313 Cr.PC, the plea of alibi was not taken by either of the two appellants.

39. A perusal of the testimony of PW-40 would show that he was a neighbor of the appellants and was examined on 10.08.2000, i.e. after 11 years of the date of the incident. Thus, he is completely untrustworthy and unbelievable. There is another reason for reaching the said conclusion.

PW-40 had stated that he went to the roof and brought the body of Sushma down in the courtyard. The witness is discredited by the testimony of PW-5, Dr. J.K. Gupta who had stated that he had examined Sushma while she was on a sofa bed. PW-5 further stated that the room was small and the light was dim. As per PW-40, on being asked by the accused, Asha Rani Duggal, he had gone to call both the appellants from their shop. Though in his cross examination by the Id. APP he had denied that he had seen Sunil Duggal with Dr Gupta but in his cross examination by the Id. defence counsel, he had admitted that the appellant no.1, Sunil Duggal had gone to call the Doctor. From above, the sequence of events appears to be that first PW-40 brought the body of Sushma down from the roof to the courtyard on the ground floor and then he had gone to call the appellant no.1, Sunil Duggal who, in turn, had gone to call Dr J K Gupta (PW-5). However, as per the testimony of PW-5, who reached the appellant's house, he had examined Sushma in a room on a sofa-bed and not in the courtyard. To establish the presence of PW-40 at the spot, the defence counsel had placed reliance on the testimony of PW-41. PW-41 was also a neighbor who was examined on 10.08.2000, i.e. after 11 years of the incident. He was also declared hostile as he had resiled from his previous statement and sought to introduce new facts.

40. On account of the above facts, both PW-40 and PW-41 appear to have been won over and have stated facts which were not a part of their earlier statements. The learned defence counsel has sought to argue that since the trial court has believed the plea of alibi of the co-accused Subhash Duggal, on parity, their plea of alibi should have been accepted and benefit extended to them. The said argument is fallacious and deserves outright rejection. Subhash Duggal had not only consistently suggested his absence to the prosecution witnesses during their cross examination, but had also produced two witnesses in his defence to substantiate his plea, which is not the case with either of the appellants.

41. As noted earlier, the appellants had taken such a plea only during the arguments for the first time, in the trial. The plea of alibi has to be taken at the first instance. Reference is made to decision of the Supreme Court in ***Sunita Sharma and Ors v. State of Delhi (2016) 15 SCC 551***, wherein it was held as under:

“9. The plea of alibi set up by the accused Sunita Sharma has been considered by the learned courts below and we have relooked into the circumstances surrounding the claim. First of all, it was a belated plea set up at the stage of examination of the accused Sunita Sharma under Section 313 of the Code of Criminal Procedure, 1973 and that too about five years after the incident. She had not taken the said stand at any earlier point of time though she was consistently present in Court in connection with her trial. That apart, the evidence of DW-1, DW-2, DW-3 contain self-contradictory statements with regard to the occasion (marriage) in connection with which she had claimed to

have visited Jalandhar. We, therefore, reject the plea of alibi set up by the accused Sunita Sharma.”

42. In ***Dhananjay Chatterjee @ Dhana vs. State of West Bengal; 1994***

(2) **SCC 220**, it was held as under:

“10(4)... but it is well settled that a plea of alibi, if raised by an accused is required to be proved by him by cogent and satisfactory evidence so as to completely exclude the possibility of the presence of the accused at the place of occurrence at the relevant time. The belated and vague plea of alibi of which we find no whisper during the cross-examination of any of the prosecution witnesses and which has not been sought to be established by leading any evidence is only an afterthought and a plea of despair.”

43. The appellants have taken false pleas in their defence during the trial as well as in the appeal. The appellants have not only consistently maintained that the death of Sushma was natural, but also at the fag end of the trial they had taken the plea that they were not present on the spot on 13.03.1989. Falsity in defence, may in itself not be a ground to convict the appellants but when seen in totality along with other circumstantial evidence on record, it can certainly be an additional circumstance that can be used against them. Reference in this regard is placed on ***Kuldeep Singh and Ors v. State of Rajasthan (2000) 5 SCC 7*** and ***Jamnadas v. State of M.P. (2016) 13 SCC 12***.

44. The prosecution has thus successfully proved that the deceased was harassed by the appellants for non-fulfillment of a demand of cash of Rs.

10000/- and a scooter. The prosecution has also successfully proved its case against the appellant nos. 1 and 3 for causing the death of Sushma by strangulation in their house.

45. Accordingly, this Court comes to the conclusion that appeal is devoid of merits and is dismissed. The conviction of appellant nos.1 and 3 under Section 302/34 IPC and under Section 498A/34 IPC as well as the order on sentence are maintained. The appellants' bail bonds are cancelled and they are directed to surrender before the Trial Court within one week.

46. LCR be returned to the Trial Court forthwith alongwith a certified copy of this judgment.

(MANOJ KUMAR OHRI)
JUDGE

(HIMA KOHLI)
JUDGE

February 25, 2019
'dc'