

IN THE HIGH COURT OF CALCUTTA

Criminal Application

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 5 of 2022

With

IA NO. CRAN 2 of 2022

Sushil Mandal

Versus

The State of West Bengal

For the appellant : Mr. Sumanta Chakraborty, Adv.
: Mr. Kasturi Dutta, Adv.

For the State : Mr. Partha Pratim Das, Adv.
: Ms. Manasi Roy, Adv.

Hearing concluded on : November 23, 2022

Judgment on : December 12, 2022

Md. Shabbar Rashidi, J.:

1. The appeal is directed against the judgment of conviction dated 01.04.2021 and order of sentence passed on 06.04.2021 by learned 5th Additional District and Sessions Judge, Malda in connection with Sessions Trial No. 49 of 2018 corresponding to Sessions Case No. 264 of 2018 convicting the appellant for the offence punishable under section 302/201 of the Indian Penal Code.

2. The case emanates from a written complaint dated 15.04.2018 by one Kanai Mondal, the son of the victim to the effect that on 14.04.2018, the de facto complainant went to his in-law's house with his wife. Being informed on 15.04.2018, he returned to his house at about 9 a.m. Coming to his house, the de facto complainant found blood on the floor of the room his mother used to occupy. He also found his mother lying on the rail-line being trampled by the wheels of the rail. The de facto complainant further stated that there were

prolonged differences between his father and his mother and there used to be frequent altercations. The father of the de facto complainant used to threaten his mother to kill her. It was stated in the written complaint that the de facto complainant suspected that his father had murdered his mother.

3. On the basis of such written complaint, Malda P.S. Case No. 135 of 2018 dated 15.04.2018 under section 302 IPC was started against the appellant Sushil Mondal.

4. The police took up the investigation and on completion of investigation thereby submitted charge-sheet under section 302/201 of the Indian Penal Code. The offences being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions upon compliance of the provision under section 207 of the Code of Criminal Procedure.

5. Accordingly, on the basis of materials in the case diary, charges under section 302/201 of the Indian Penal Code were framed against the appellant.

6. In order to prove the charges so leveled against the appellant, the prosecution examined as many as eleven witnesses. In addition, prosecution also adduced documentary evidences.

7. The de facto complainant himself deposed as PW1. He proved his signature on the written complaint scribed by one Naresh Sarkar as per his instructions (Exhibit 1/a). He further stated that Padma Mondal was his mother. One day, PW1 was absent from his house. He returned back being informed by the villagers over telephone and saw the dead body of his mother lying beside rail-line cut in two pieces. He also saw certain injuries on the body of his mother, when it was packed in a gunny bag. He further stated that police examined the dead body and he made a statement before the police. PW1 proved his signature on the inquest report (Exhibit-

2/a). After returning home, he went into the bed-room of his parents and found the articles therein in a scattered condition and damaged due to ransack. In his examination-in-chief, PW1 also stated that the relations in between his mother Padma Mondal and father Sushil Mondal were sometimes good and sometimes bitter.

8. PW2 identified the appellant and claimed to indentify the victim. He also stated that there used to be quarrels in between the appellant and the victim who were husband and wife. He heard from his son that Padma Mondal was murdered and her dead body was lying beside the rail-line. He went to the rail-line and saw the dead body lying cut in two pieces. He also saw marks of injuries at different parts of her body. PW2 also claimed to have seen blood marks on the pathway connecting the house of the appellant and the rail-line. He could also see the marks of dragging on the said pathway. PW2 further stated that he entered into the house of the appellant and saw bloodstains. He could

also see one bloodstained brick in the house. The walls of the house were also stained with blood. The mosquito net was in fixed position. He also saw blood marks on the bed inside the room. He has further stated that he could see bloodstains right from the aforesaid room up to the rail-line. In his cross-examination, PW2 has stated that his house was about fifty meters away from that of the appellant.

9. The scribe of the written complaint has been examined as PW3. He stated to have scribed the written complaint as instructed by the de facto complainant (PW1) at Malda P.S., which was read over and explained to the maker of the complaint. PW3 has proved the written complaint (Exhibit 1) and his signature thereon (Exhibit 1/b).

10. PW4 is the medical officer who held post-mortem examination on the dead body of the deceased Padma Mondal 15.04.2018. He has stated that on examination, he found injuries such as

- I. One lacerated wound measuring 1.5 inch x 0.5 inch x scalp placed over right occipital area of scalp.***
- II. On dissection, extravasations of blood noted into deeper layer of scalp along the wound along with fissure fracture of right parietal bone. On opening cranium subdural and subarachnoid hemorrhage noted over right parietal occipital area of brain including under surface of right side of brain.***
- III. One incised wound 1" x 1/4" obliquely placed over left side of face just left to lateral canthus of left eye with telly of 1" at lower aspect of wound indicating direction towards and laterally.***
- IV. One incised wound measuring 2" x 1/2" obliquely placed in front of left ear extending up to left ear separating tragus from ear concha.***
- V. One lacerated wound measuring 2" x 1/2" up to malar deep placed over left cheek.***
- VI. One incised wound measuring 1/2" x 1/4" horizontally placed over lower aspect of left lower front of forearm.***

VII. One incised wound measuring $\frac{1}{2}$ " x $\frac{1}{4}$ " vertically placed over inner aspect of right arm just above elbow.

VIII. One abrasion 3" x 3" placed over right cheek. Margin of the incised wound are clean and clear and of lacerated wound irregular with evidence of extravasations of blood in and around. All the aforesaid injuries are fresh and showing evidence of vital reactions.

IX. One crushing injury causing through and through amputation at the level of T8 to T10 having dimension 8" x 6" at upper segment and 11" x 6" (at lower segment) mutilating all the structures i.e. muscles, vessels, nerves, liver GIT, spleen, kidney, vertebrae at corresponding level. Also there is crushing effects of lower fore ribs and lower portion of lungs. These crushing injuries, show no vital reaction and post mortem in nature. No other injury could be detected.

11. According to PW4, the injuries mentioned at serial no. 1 to 7 were fresh and occurred within 24 hours of the autopsy examination. He also opined that injury at serial no. 1 was sufficient enough to cause death in ordinary

course of nature in comparison to all other injuries. He also opined that the lacerated wound was caused by some hard and blunt object, whereas incised wounds, in the opinion of PW4, were caused by some sharp cutting weapon having at least one sharp edge. PW4 proved the postmortem report prepared in his pen and signature (Exhibit 3); in his cross-examination, PW4 categorically stated that the aforesaid type of injuries could not have taken place if the person sustained exceptional injury with train.

12. PW5 is a resident of the same village where the victim resided. She knew the victim. She further stated that the victim Padma Mondal and her husband used to reside separately. The accused did not provide food to the victim and their relations were bitter. The said Padma Mondal had two married daughters who were residing at their in-laws' houses whereas her married son used to reside in the same house. She further stated that the victim Padma Mondal died a year ago from 27.06.2019

and her dead body was recovered from rail-line. PW5 also went to see the dead body. PW5 further stated that the rail-line was situated on the back side of the house of the victim. In her cross-examination, PW5 stated that her house was intervened by fifteen-sixteen houses from that of the victim.

13. PW6 was an assistant sub-inspector of police posted at Kumedpur GRP under Malda Town GRPS. On 15.04.2018. he conducted inquest on the dead body of the victim at 8.25 a.m. in connection with Malda GRPS UD Case No. 21 dated 15.04.2018. He has proved the inquest report prepared in his pen and signature (Exhibit 1). In his cross-examination, PW6 has stated that the distance between rail-line and the house of the victim was approximately five hundred meters. He further stated that as per his inquiry, there was a quarrel between Padma Mondal and her husband in the night of 14.04.2018 and her husband assaulted by a sharp cutting weapon resulting in her death.

14. Another villager has deposed as PW7. She has stated that Padma Mondal died on the first day of Baisakh (one year ago from 02.09. 2019). PW7 saw the dead body over the rail-line. Upon leaving her bed in the morning, she saw many person gathered near her house. Thereafter, she went to the house of the victim and saw blood marks in the said house, which continued up to the rail-line. Thereafter, she went to the rail-line for the dead body of the victim divided in two parts. She has further stated that the victim, her husband Sushil Mondal, mother-in-law, son and son's wife used to reside in the house, but on that day son of Padma Mondal and her daughter-in-law were not present as he had gone to bring his wife from her father's house. PW7 also stated that the relations between Padma Mondal and Sushil Mondal were not good. Police came there and seized one mosquito net and guarder which was used for her hair-locks. PW7 proved his signature on the seizure list (Exhibit 15/a). She also proved her signature on another

seizure list in which one brick and other articles were seized (Exhibit 4/A). In her cross-examination, PW7 has stated that her house was intervened by five houses from that of the appellant Sushil Mondal and she had visiting terms at the house of the appellant.

15. The daughter of the victim Padma Mondal has deposed as PW8. She has stated that her mother died about a year and four months ago (from 02.09.2019) and that she was killed by the father of PW8 Sushil Mondal. She further stated that upon receipt of a phone call regarding the death of her mother, she came to her father's house and saw bloodstains in the house. The articles were lying in proper condition. She also stated that the bloodstains continued up to the rail-line and she saw the dead body of her mother on the rail-line in two parts. She also stated that the relations between her father and mother were not good. Her father was not present in the house when she came. PW8 proved her

signature on the inquest report (Exhibit 2/b) and that on the seizure list (Exhibit 15/c). She further proved her signature on another seizure list (Exhibit 4/b) and that on her statements recorded by learned magistrate (Exhibits 5/a and 5/b). She also proved her statement recorded by learned magistrate (Exhibit 5).

16. PW9 is an assistant inspector of police. According to him, the wearing apparels of the victim and viscera samples were seized under a seizure list. PW9 proved his signature on the seizure list dated 27.04.2018 (Exhibit 6/a). PW9 also proved the seized wearing apparels of the victim (MAT Exhibit I and MAT Exhibit-II).

17. Another daughter of the victim was examined as PW10. She has also stated that the relations between her deceased mother and her father Sushil Mondal were not good. Her mother died on 1st day of Baisakh (One and half year ago from 18.11.2019) and her dead body was found near the rail-line which was at a distance of one minute from the house of Sushil Mondal. She further stated that

upon getting the news, she came to the locality and went to the rail-line. There, she saw the dead body in two parts and went senseless. She further stated that after she regaining senses, she came back to the house of her father and saw blood in the room where his mother and father used to reside. She also saw blood in the bed and the loan outside the room. The mosquito net was also found to be blood-stained and the stains of blood continued up to the rail-line. The house hold articles in the room where blood was witnessed by PW10 were found in a scattered condition. The father of PW10 was not present there. PW10 also stated that her father used to assault her mother occasionally, did not provide food to her and used to threaten her that he would attain peace after cutting her.

18. PW11 is the eye of this case. He has proved the endorsement of the receipt of the written complaint by one of his colleague Manabendra Saha, the then IC Malda of Police Station (Exhibit 1/6/1) and the formal FIR

(Exhibit 7). Being endorsed with the investigation, PW11 took up the investigation of the case. In course of investigation, he visited P.O. and prepared rough sketch maps of the two places of occurrence. (Exhibit 8 and 8/a and 9 and 9/a respectively). PW11 also proved the seizure list through which blood stained brick, another articles were seized by him (Exhibit 15) and the articles were seized (MAT Exhibit-III, II and VIII). PW 11 also examined the available witnesses and recorded their statements under section 161 of the Code of Criminal Procedure, arrested the accused. He also proved the seizure list through which part of blood-stained concrete, some blood-stained leaves, broken parts of Sankha, Pola were seized as per the statement leading to recover of the aforesaid article by the appellant (Exhibit 4). The aforesaid seized articles were also proved by PW11 (MAT Exhibit-IX, X and XI respectively). PW11 also collected the post mortem report of the deceased and seized wearing apparels, viscera of the deceased victim under a

separate seizure list (Exhibit 6). He also collected the dead body challan and the inquest report (Exhibit 10 and 11 respectively). PW11 forwarded articles to RFSL, Jalpaiguri under a forwarding (Exhibit 12) and the reports received from the regional forensic science laboratory Jalpaiguri (Exhibits 13 and 14). PW11 also stated that the distance between the first and second place of occurrence is about twenty/twenty-five meters.

19. Upon completion of the trial of the case and evidences on behalf of the case of the prosecution, the appellant was examined under section 313 of the Code of Criminal Procedure. The appellant pleaded his innocence but no explanation to the incriminating circumstances against him, were offered by the appellant. The appellant also denied adducing any evidence in support.

20. Accordingly by the impugned judgment and order, the appellant was convicted for the offences punishable under section 302/201 of the Indian Penal Code and he was sentence to undergo rigorous imprisonment for life

and a fine of Rs. 10,000/- (Rupees Ten Thousand only) in default of payment of the said fine, he was sentenced to undergo rigorous imprisonment for another six months for the offences punishable under section 302 of the Indian Penal Code. The appellant was also sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5000/- (Five Thousand Only) in default of such payment, he was sentenced to suffer further rigorous imprisonment for three months for which offences punishable under section 201 of the Indian Penal Code.

21. It is this judgment of conviction and order of sentence which has been challenged in the present appeal. According to the narrative submitted by the prosecution and the evidence adduced on this behalf, it comes out that the appellant and the victim were husband and wife. Evidence on record goes to show that there were strained relations between them, though they were residing in the same house. The said house also inhabited by the mother of the appellant, his son and

wife of son. On the fateful day, the son went to bring back his wife from his in-law's house. The appellant and the victim were in the house. Being informed, the son of the victim (PW1) came back to his house and saw the dead body of his mother lying beside the rail-line. Recovery of the dead body of the victim from near the railway-line has been testified by almost all the witnesses examined in the case. Moreover, such recovery of the dead body is further fortified by (Exhibit 2) inquest report. It also transpires from the evidence on record that the victim had multiple injuries on her person. From the evidence of autopsy surgeon PW4 and the postmortem report (Exhibit 3), it appears that the victim had sustained as many as eight injuries on different parts of her body including the crashing injury causing through and through amputation. However, as per the opinion of the doctor who conducted the postmortem examination, such crashing injuries showed no vital reaction and were postmortem in nature. According to him, the cause of

death of the victim was the other injuries mentioned at serial nos. 1 to 7, hereinafter the autopsy surgeon has also opined that in injury no. 1 i.e. lacerated wound on the scalp placed over right occipital area of scalp was sufficient enough to cause death in ordinary course of nature. It was also the opinion of the doctor that the lacerated wounds were inflicted by hard and blunt object and incised wound by a sharp cutting weapon having at least one sharp edge. The Exhibit -3 is quite explicit that the death of the victim was caused due to injury nos. 1 to 7 which were ante-mortem in nature whereas the crashing injury was post-mortem. This fact was further embolden by the cross-examination of PW4 where he categorically stated that the aforesaid type of injury therein takes place if the said person sustained occipital injury with train.

22. Be that as it may, Exhibits- 2 and 3 together with the oral testimony of the prosecution witnesses sufficiently established that the victim Padma Mondal

was murdered by inflicting injuries mentioned at serial nos. 1 to 7.

23. Once it is convincingly established that the victim was murdered, naturally, question comes into one's mind: "who is the perpetrator?"

24. Admittedly there are no eye witnesses to the incident. According to the story set out by the prosecution, the appellant who happens to be the husband of the victim had strained relations with the victim for a considerable time. There used to be altercations between them. It is the case that taking advantage of the loneliness of the victim in the house, the appellant committed murder of his wife in the bed room due to such strained relations and after committing such murder, he had thrown the dead body over the railway-line where the crashing injury was inflicted upon the dead body of the victim.

25. The evidence on record goes to show that the relations between the husband and the wife i.e. the

appellant with the victim were not good. It also transpires that the appellant used to deny proper food to the victim and there used to be altercations between them. From the evidence of PW1, it transpires that upon his return when he went to the bed room of his parents, he saw the articles scattered and damaged due to ransack. The witnesses to the fact have also testified to have seen blood-stain in the room habited by the appellant and the victim, and also the articles kept therein. Blood was also found on the mosquito net in a fixed condition and also on the bed of the victim. The mosquito net and other articles were seized. There are evidences on record that the witnesses could also see the dragging mark between the house of the victim and the railway line though, the same has not been corroborated by other evidences.

26. From the purport of evidence adduced on behalf of the prosecution, it transpires that, admittedly, there are no ocular witnesses to the incident of death of the victim Padma Mondal. However, the circumstances do suggest

that the victim was killed by the appellant. The prosecution has sought to assail the impugned judgment of conviction and order of sentence. It has been stated that the charges framed against the appellant in the Learned Trial Court were vague and therefore a conviction passed on such charge is liable to be set aside. It has been contended that the charges framed against the accused the appellant does not describe the exact time and the manner in which the offence was committed. On this aspect, learned advocate for the appellant has relied upon a decision of **AIR 1956 SC 575 (Jaswantrao Manilal Akhaney v. State of Bombay, AIR 1956 SC 575)** wherein it was observed that,

“17. It was next contended that the charge as framed by the trial court was illegal and vague and had caused material prejudice to the appellant. The charge as framed has already been set out. The learned trial Magistrate had stated at the end that a detailed charge was to be separately framed. But no such charge is before us and the

appeal has proceeded on the assumption that no such detailed charge was as a matter of fact framed by the trial court. The question therefore is whether the charge, such as it is, complies with the requirements of the law. It has been argued on behalf of the appellant that the charge is materially defective insofar as the nature of the breach of trust, the facts constituting the breach, the exact date and manner of the breach have not been set out. The charge as framed fulfils the requirements of Section 221 of the Criminal Procedure Code, because it has mentioned the name of the offence, namely, criminal breach of trust and specified Section 409 of the Indian Penal Code, which impliedly gives notice to the accused of every legal condition required by law to be fulfilled in order to constitute the offence of criminal breach of trust. It has also fulfilled the requirements of Section 222(1) of the Code insofar as it has specified the securities in respect of which and the Cooperative Bank against which a criminal breach of trust had been committed. Those particulars, in our opinion, were sufficient to give the accused notice of the matter with

which he was charged. The trial court has made reference to the provisions of subsection (2) of Section 222. But it was in error in relying upon those provisions which relate to the offence of criminal breach of trust or dishonest misappropriation of money, which was not the present case. It is true that the manner of the commission of the offence as required by Section 223 of the Code has not been set out. But that has to be set out only when the nature of the case is such that the particulars required by Sections 221 and 222 had not given the accused sufficient notice of the matter with which he is charged. In our opinion, though the charge could have been more detailed as was intended by the learned Magistrate, as framed, it gives the accused sufficient notice of the nature of the offence alleged against him. Even assuming that there were certain omissions in the charge, they cannot be regarded as material unless in terms of Section 225 of the Code it is shown by the accused that he had in fact been misled by such omission or that there had been a failure of justice as a result of such error or omission. The illustrations under that

section show that each case has got to be judged on its own particular facts and there cannot be any general presumption that every error or omission in a charge has materially affected a trial or occasioned a failure of justice. In this case from the long written statement filed on behalf of the appellant it is clear that he was aware of the gravamen of the charge against him and that he tried to meet it in all its bearings. We are not therefore impressed by the argument advanced on his behalf that the omissions in the charge are material and that the case should be tried over again on a fresh charge. The learned Judges of the High Court constituting the Division Bench which heard the appeal have written separate but concurring judgments, but they did not notice any argument having been advanced before them on the question of the illegality or irregularity in the charge. That also would show that the appellant did not make it a grievance at the time of the argument of the appeal, though a ground had been taken in the memorandum of appeal that the charge as framed was vague and defective and as such

bad in law. In our opinion, this is not a case in which it can be said that the omission in the charge has materially affected the trial of the case or prejudiced the appellant in his defence or has occasioned a failure of justice.”

27. On perusal of the charges set out against the appellant by learned trial Court it transpires that the appellant was charged with intentionally causing death of the victim Padma Mondal at any time before 9 am of 15.04.2018. We have already concluded that there is no eye witness to the occurrence and the case is wholly based on circumstantial evidence and the case was first informed by the police discloses that the murder was detected by the recovery of the dead body of the victim lying over the rail-line. The charges so framed against the appellant appears to be capable of giving sufficient notice to him as to for what offence or for what sets of acts committed on his part, he was proceeded against as envisaged under section 211 and 212 of the Code of

Criminal Procedure. The appellant has failed to establish that the charges so framed against him actually caused any prejudice to the appellant. In the facts and circumstances, the case of the prosecution seems to be well indemnified under the provision of section 215 of the Code of Criminal Procedure.

28. The appellant also seeks to assail the impugned judgment of conviction and order of sentence pointing out certain discrepancies in the prosecution story. It has been pointed out that the case as set put by the prosecution, the murder is said to have been committed with the help of a brick. A brick was actually seized in course of investigation. At the same time, a piece of concrete has also been seized allegedly as per the statement leading to recovery given by the appellant himself. It has been submitted that either the brick or the concrete was not sent for ascertainment of finger print. Moreover, no neighboring witnesses of the two places of occurrence i.e. house of the victim as well as the railway

line have been examined by the prosecution. Not even the mother of the appellant was examined by the prosecution. Besides that, some witnesses of the inquest were also not examined. The aforesaid facts, according to the appellant, gives rise to an adverse inference regarding the veracity of the prosecution story. In this connection, the appellant has relied upon the case of **Raghav prapanna Tripathi and others versus State of U.P. reported in AIR 963 SC 74.**

29. In the aforesaid decision, neither the dead bodies nor the vehicle, through which, the dead bodies were carried were recovered. The facts of the present case are altogether different from that of the case relied upon by the appellant, and are not relevant.

30. The appellant has also pointed out that the rough sketch map prepared by the I.O. (Exhibits 8 and 9) does not specifically mention the exact place where the dead body was recovered. The recovery of dead body was also not pinpointed by seizure of blood stained earth from the

rail-line and examination of the train driver. It has also been submitted on behalf of the appellant that the seizure list witnesses have not supported the seizure of the aforesaid articles though they signed on the seizure list. Place of recovery has not been proved. In this respect, the appellant has relied upon the decision of **Arab Sk versus State of West Bengal and others (2015 SCC Online Cal 1435)**. In the aforesaid case, this Hon'ble Court had held that learned trial Court came to a wrong conclusion regarding the proof of the discovery of certain articles where the seizure list witness had stated that his signature was obtained by the investigating officer on a blank paper and despite that the said witness was not declared hostile by the prosecution. It is contended that in the instant case also, the seizure list witnesses have stated that their signature was obtained in the police station and as such seizure of the blood stained articles are not credible. However, from the scrutiny of PW7, it transpires that she signed on the

seizure list and saw the seizure (Exhibit 4/a & Exhibit 15/a). PW8 has also witnessed the seizure and proved her signature (Exhibits 15/c and 4/b). Although some of the witnesses to seizure and inquest have not been examined but evidence goes to show that other witnesses to such documents prepared at the time of recovery and inquest have been examined. They have been cross-examined by the defense as such identified much force in the contention of the appellant that his prosecution is bad and not proved by convincing evidence. The appellant has also relied upon a decision of the Hon'ble Supreme Court in **Criminal Appeal No. 388 of 2021 (Vasudev versus State of M.P.)**. It has been contended by the appellant that in the aforementioned case, the conviction of the appellant therein was assailed by the Hon'ble Supreme Court for non-examination of independent witnesses to the recovery of articles under section 27 of the Indian Evidence Act. On reading of the aforesaid decision, it appears that the conviction in the

said appeal was assailed on the basis of FSL report showing that no gun-shot was fired from the fire-arm recovered from the possession of the appellant therein. The ratio laid down in the said decision, I am afraid, does not conform with the facts and circumstances of the instant case.

31. Learned Advocate on behalf of the appellant also pointed out certain contradictions between PW1 and PW8. It was also contended that the blood group has not been established by the serological report. Mere presence of blood on the articles seized from and around the place of occurrence may not be sufficient to convict the appellant. In this regard, the appellant has relied upon a decision of **Prabhu Babaji Navle v. State of Bombay, AIR 1956 SC 51**. It was held in the aforecited decision that,

“21. The Chemical Examiner's report about the blood stains is slovenly and perfunctory and we have noticed with regret the same

slovenliness in the reports of other Chemical Examiners in some other cases that have recently come before us. The Chemical Examiner's duty is to indicate the number of blood stains found by him on each exhibit and the extent of each stain unless they are too minute or too numerous to be described in detail. Merely to say that blood was detected on an exhibit, as this report states, is not enough. It may well lead to a miscarriage of justice compelling judges to acquit when they would have convicted had the report been more revealing. We trust these observations will be brought to the notice of all Chemical Examiners in the country. Not that they all act like this. Many give full and detailed reports as they should."

32. In the instant case, however, the learned trial judge did never seem to rely upon the proof of the guilt of the appellant on the basis of the FSL report. The recovery of blood stains on the bed, mosquito net, inside the room habited by the victim and other places unfolded the circumstances which pointed to the guilt of the appellant.

33. So far as the circumstantial evidence is concerned, the appellant has also relied upon a decision reported in **(1979) 3 SCC316 (State V. Gulzarilal Tandon)**. In this case it was held by the Hon'ble Supreme Court that, where the case of the prosecution rests purely on circumstantial evidence, motive undoubtedly plays an important part in order to tilt the scale against the accused. It is also well-settled that the accused can be convicted on circumstantial evidence only if every other reasonable hypothesis of guilt is completely excluded and the circumstances are wholly inconsistent with the innocence of the accused. Appellant also relied upon the case of **Raghav PrapannaTripathi V State of UP (AIR1963 Supreme Court 74)** wherein relying upon the case of **Govinda v. State of Mysore [AIR 1960 SC 29]**, it was observed that,

“In cases where the evidence is of circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established

and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probabilities the act must have been done by the accused. The principle that the inculpatory fact must be inconsistent with the innocence of the accused and incapable of explanation on any other hypothesis than that of guilt does not mean that any extravagant hypothesis would be sufficient to sustain the principle, but that the hypothesis suggested must be reasonable.”

34. On the point of circumstantial evidence, the appellant has also relied upon the case of **Budha Satya Venkata S Rao & Ors v State of Andhra Pradesh 1994 Supp (3) SCC 639** wherein it was held that in a case

based on circumstantial evidence, motive becomes relevant.

35. The appellant further cited the decision in the case of **Joshinder Yadav v. State of Bihar (2014) 4 SCC 42** for non production of the FSL report. However, Hon'ble Court in the said case observed that even though the viscera report was not brought on record, corroborative evidence and attending circumstances lead to irresistible conclusion of guilt of accused, the accused was not able to discharge his obligation under section 106 of the Indian Evidence Act, to explain as how body of the deceased was found in the river and consequently, the appeal was dismissed.

36. The appellant further cited the decision of **Gayadin V. State of M.P. (2005) 12 SCC 267**. In the aforesaid case the accused i.e. husband of the victim was convicted on the basis of circumstantial evidence which showed that he hastily arranged for the cremation of the dead body of his wife. Possibly, this case has been relied by the

appellant on the ground that the appellant therein was not interrogated by the police for considerable time despite being available and the accused set up a plea of false alibi which turned to be false.

37. However, in the present case, the appellant was arrested within hours of the recovery of dead body and no defense whatsoever, has been set up by the appellant to justify his exoneration.

38. On the self same point of law, the appellant also relied upon the decision of Hon'ble Supreme Court in the case of **Ramesh Bhai & Anr. V. State of Rajasthan** in **Criminal Appeal Nos. 868-869 of 2004**. In the said case it was reiterated that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The case at hand deals with a situation where the appellant being husband of the victim used to reside in

the same house and same room. The circumstances do indicate that the victim died with so many injuries on her person, in the room and no explanation offered by the appellant clearly points to the guilt of the appellant. Not only that, the circumstances, rules out any possibility of involvement of any other person in the incident.

39. The facts of the case of **Sou. Vijaya @ Baby V. State of Maharashtra, AIR 2003 Supreme Court 3787** are altogether different from the present case. In the said case the appellant and the victim were sleeping in different rooms and on that basis the Hon'ble Apex Court held that knowledge of the commission of the offence could not be attributed to the appellant, therein, therefore, the appellant could not be held responsible for causing disappearance of the evidence. In the instant case, the appellant is the one who has been prosecuted for the murder of his wife living under the same roof and same room.

40. The ratio laid down in the case of **Bhupendra Singh v. State of Uttar Pradesh, AIR 1991 Supreme Court 1083** relied by the appellant deals with the relevance of intention to kill. In fact, by relying upon such decision, the appellant might be taken to admit carrying out certain acts which ultimately resulted in the death of the victim. However, we withhold ourselves from such conclusion in the better interest of justice but the ratio cannot be applied in the facts and circumstances of the present case.

41. The appellant also relied upon the decision of Hon'ble Supreme Court in the case of State of **Punjab v. Sarup Singh, AIR 1998 Supreme Court 2899**. It was elicited that mere recovery of articles belonging to the deceased from the possession of accused and that too, in absence of independent witnesses cannot be said to be reliable proof of the guilt of the appellant. In the instant case however, the victim was the wife of the appellant living in the same room with history of bad relations and

the bloodstained articles were recovered in presence of independent witnesses. The facts of the case at hand are totally at variance with that relied upon by the appellant.

42. In the instant, case the appellant and the victim, husband and wife in relationship, were living under the same roof and in the same room. The victim was found to be dead and the dead body thrown over the railway line on a day when the son of the victim was out to her in-law's house. Blood was found in the bedroom and bloodstained articles were seized from inside the room. The medical evidence can safely be relied on the fact that the crushing injury found on the person of the victim was post mortem in nature. Witnesses have also testified that there were dragging marks on the way to the railway line from the house of the victim and the appellant. No defense of alibi has been set up by the appellant. In fact, no explanation has been offered by the appellant explaining the possible causes of death of his wife.

The appellant, being the husband, was under obligation to explain the circumstances leading to the death of his wife in terms of the provisions of section 106 of the Indian Evidence Act, which he has failed. An adverse inference necessarily follows in the facts and circumstances of the case.

43. In this regard, appellant has relied upon the decision in the case of **Nagendra Sah V State of Bihar, (2021) 10 SCC 725**. In the aforesaid case, it was laid down that,

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.”

44. The appellant did not offer any explanation as to the circumstances which resulted in the death of his wife. There is no explanation as to what happened when he was alone with his wife inside the bedroom, how the floor, bed and mosquito net were stained with blood and how the dead body of the victim was found over the railway line. All these circumstances, lead to a reasonable conclusion pointing to the guilt of the appellant. The appellant has miserably failed to discharge his obligation enjoined upon him by section 106 of the Indian Evidence Act.

45. The appellant further relied upon the judgment in **Balaji Gunthu Dhule v State of Maharashtra, (2012) 11 SCC 685**. In the said case the conviction of the appellant therein was secured relying solely upon post mortem report which was set aside by the Hon'ble Apex Court. However, in the instant case, besides the post mortem report, evidence of the witnesses as well as the circumstances convincingly point to the guilt of the

appellant and the appellant has failed to discharge his obligations. Therefore, the ratio in the aforesaid case is of no assistance to the appellant.

46. The ratio in the case of **Sharad Birdhi Chand Sarda V State of Maharashtra (1984) 4 SCC 116** is equally not applicable in the facts and circumstances of the present case. In the said case, it was observed that in order to bring home the charges on the basis of circumstantial evidence, prosecution must prove the complete chain of circumstances. False explanation offered by the defense cannot be taken to fill up the lacuna in the prosecution story. The hon'ble Supreme Court, in the said decision laid down that,

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

47. We have already held hereinbefore, that the prosecution has been able to prove the complete chain of circumstances pointing to the guilt of the appellant and appellant only and the appellant has failed to offer reasonable explanation to the circumstances indicting his guilt.

48. The appellant has also placed reliance on the judgment in the case of **State of Maharashtra v Madhukar Govind Pakhare 1998 SCC (Cri) 943**. The facts of the said case were totally different from that of the instant case. In the said case, the prosecution had failed to prove that the wearing apparel and chappals

were stained with blood whereas in the case at hand, the seized articles were proved with sufficient certainty the it contained blood. Apart from that, the appellant has not been able to explain the circumstances definitely pointing to his guilt with exclusion of anybody else in the world.

49. Moreover, during examination of the appellant under the provisions of section 313 of the Code of Criminal Procedure, the appellant was confronted, with sufficient clarity, the circumstances pointing to the guilt of the appellant and appellant only. He was clearly asked that the room where he used to sleep with the victim was found by the witnesses ransacked and with marks of blood on the bed, floor and the mosquito net and yet the appellant pleaded ignorance without offering any explanation to such circumstances.

50. Therefore, in the light of discussions made hereinbefore, we are of the view that the impugned judgment of conviction and order of sentence passed by

the learned trial court are well founded and require no interference.

51. Accordingly, the appeal being Criminal Appeal (DB) 5 of 2022 stands dismissed.

52. Connected applications, if, stands disposed of.

53. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

54. Copy of the judgment along with Trial Court Records be sent down to the trial court at once for necessary compliance.

55. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[MD. SHABBAR RASHIDI, J.]

56. I agree.

[DEBANGSU BASAK, J.]