

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRA-D-1339-DB-2014(O&M)

Reserved on : 22.11.2022

Date of Decision: 19.12.2022

Sandeep Tomar No.SS433024A

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. Suvir Sidhu, Advocate,
for the appellant.

Mr. Sandeep Vermani, Addl.A.G., Punjab.

Mr. Sumeet Goel, Sr. Advocate with
Mr. Viraj Gandhi, Advocate, and
Mr. Adarsh Dubey, Advocate,
for the complainant.

SUKHVINDER KAUR, J.

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 21.07.02014 passed by the Court of learned Additional Sessions Judge Fazilka, vide which appellant Sandeep Tomar has been convicted for having committed offence under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo rigorous imprisonment for one year.

2. Brief facts as per the prosecution story are that on 09.07.2013, a telephone call was received by SI Raj Kumar, Investigating Officer that one lady had committed suicide by hanging herself, inside the cantonment area, Fazilka road. Then he along with other police officials reached at Abohar

Cant, where Subedar produced before him belongings of deceased Shweta i.e. white metal ring, Yellow kurta, black pajami and one panty. These articles were converted into a parcel, which was sealed with his seal bearing seal impression RK. He also took into possession two vials. Dead body of Shweta was kept at dead house Abohar. Investigating officer handed over the said parcel to MHC on reaching the police station and also recorded that the further proceedings were to be conducted on arrival of heirs of Shweta Singh.

3. On 10.07.2013, when investigating officer along with other police officials was present at Civil Hospital, Abhohar, then Ram Naresh Singh son of Santbakhsh Singh, resident of House No.631/3-3 near Durga Mandir, Ismile Ganj, Police Station Gajipur, District Lucknow, (father of deceased Shweta Singh) got recorded his statement before the investigating officer, that he was residing at the above said address and was doing the job in Hindustan Aero Natics Limited (H.A.L. Lucknow). He had solemnized marriage of his daughter Shweta Singh with Sandeep Tomar on 12.02.2013. Sandeep Tomar was now posted at 12 Bihar Regiment Abohar. He had given a draft of Rs.10 lacs at the time of marriage and Rs.10 lacs at time of shagun, gold ornaments valuing at Rs.5 lacs to his parents and in the dowry he had given the household articles consisting of TV, Fridge, AC, Bed and furniture and besides that he had spent Rs.5 lacs on the meals at the time of marriage. He further stated that after few days of marriage, the in-laws family of his daughter i.e. mother-in-law Padma Tomar, father-in-law Mangal Singh and husband of his daughter Sandeep Tomar started taunting his daughter for bringing less dowry. They also told his daughter that why she had not brought any vehicle from her parents and they asked her to

bring Rs.10 lacs in cash and Duster car from her parents and otherwise they would eliminate her. When their these demands were not fulfilled, then they started asking his daughter to get transferred the plot in their name which was in the name of the parents. His daughter used to disclose about it, to his wife Rani telephonically, but asked her not to disclose anything to the complainant (her father). On 08.07.2013 at about 4.44 PM, he talked to his daughter on the phone, who told him that Sandeep Tomar had been beating her and had been asking her frequently, that why she had not brought Rs.10,00,000/- and the vehicle, and why she was not getting the plot transferred in his name. Afterwards at about 9.30 PM, his wife also talked to his daughter on the phone and his daughter apprised his wife also regarding the above said facts and his wife then had told him about the same. He was of the firm belief that her husband Sandeep Tomar, father-in-law and mother-in-law were responsible for the death of his daughter Shweta Singh and action be taken against them. From statement of the complainant prima facie offence under Section 304-B IPC was found to have been committed, which resulted into registration of the present FIR No.126 dated 10.07.2013, under Section 304-B, Police Station City-1, Abohar, against the accused Sandeep Tomar and his parents Mangal Singh and Padma Tomar.

4. The Investigating officer visited the spot and prepared the site plan of the place of occurrence. He recorded the statements of witnesses and postmortem was got conducted. After postmortem, the dead body of Shweta Singh was handed over to her heirs. The investigating officer also took into possession ornaments lying in the quarter of Sandeep. On 15.07.2013, accused Sandeep Tomar was arrested and produced before the

Court on 16.07.2013. On 17.07.2013, dowry articles were taken into police possession vide separate recovery memo. On 24.07.2013, the investigating officer got identified the gold and silver ornaments from Ram Niwas Singh, his wife Rani Singh and goldsmith Lalit Sony.

5. During investigation, investigating officer also obtained record relating to dowry articles and call details of mobile No.9792052289 from 12.02.2013 to 10.07.2013. The statements of the witnesses were recorded. The bank record of account No.2414000400053791 qua complainant Ram Niwas Singh and account No.30164842426 qua Subedar Mangal Singh was obtained.

6. During the investigation, the parents of Sandeep Tomar were found innocent. After completion of the necessary investigation and all other formalities, the challan was presented in the Court of SDJM Abohar, against accused/appellant Sandeep Tomar, who after finding that the offence was triable by the Courts of Sessions, committed the case to the Sessions Court, Fazilka .

7. Finding the prima facie case, the charge for offences punishable under Section 304-B IPC or in the alternative under Section 302 IPC was framed against the accused. The accused pleaded not guilty to the charge and claimed trial.

8. During the course of prosecution evidence in order to prove its case, the prosecution examined PW-I CHM AK Mishra No.4270283M, 12 Bihar Regiment Cant Abohar, PW-2 Ram Naresh Singh complainant, PW-3 Rani Singh wife of Ram Naresh Singh, PW-4 HC Ramesh Chander No. 485/FZK, PW-5 Dr. Amita Chaudhari, Medical Officer, Civil Hospital Abohar, PW-6 SI Raj Kumar, Investigating officer, PW-7 Dr. KD Vasisht

Medical Officer, Civil Hosptial Abohar, PW-8 Dr. KP Patidar Medical Officer, 416 Field Hosptial, Abohar and PW-9 HC Hans Raj No.509/FZK. Thereafter, Additional Public Prosecutor for the State closed the prosecution evidence.

9. PW-1 CHM AK Mishra No.4270283M has deposed that on 10.07.2013, when he was posted in the above-said regiment then in his presence and in the presence of Captain Parth Chandel, SI Raj Kumar Investigating Officer, came to the quarter of accused Sandeep Tomar and after opening lock of the quarter he took into possession four bangles of gold, one gold chain, one kitty set tops, one big necklace gold, one pair of ear rings, jhumar tops, one gold Mangal-Sutra, one small pair of tops, one more gold tops, three rings of gold, one silver ring, one pair of anklets of silver and one artificial necklace. These ornaments were taken into possession by the police, vide memo Ex.PA, which was witnessed by him and Captain Parth Chandel.

10. PW-2 complainant Ram Naresh Singh is father of deceased Shweta Singh and the case has been registered on the basis of his statement Ex.PB recorded by the investigating officer on 10.07.2013. He has deposed in detail as per the version recorded in his statement Ex.PB. He has also deposed that on 24.07.2013, the jewellery was got identified from him and in this respect, the identification Memo Ex.PC was prepared.

11. PW-3 Rani Singh is mother of deceased Shweta Singh. She has also deposed in detail regarding treating her daughter Shweta Singh with cruelty by the accused and harassment at his hands of her daughter for the demand of more dowry. She has deposed on the similar lines as PW-2 Ram Naresh Singh, her husband, and has also deposed that her deceased daughter

used to disclose her regarding the said cruelty and harassment at the hands of the accused.

12. PW-4 HC Ramesh Chander No.458/FZK, Police Station City-I Abohar, has deposed regarding arrest of accused Sandeep Tomar on 15.07.2013 and has proved on record the arrest memo Ex.PD and Intimation Memo Ex.PE in this regard. He has also proved on record the recovery memo Ex. PF regarding taking into possession the dowry articles by SI Raj Kumar.

13. PW-5 Dr. Amita Chaudhry, Medical Officer, Civil Hospital, Abohar, has stated that on 10.07.2013, she along with Dr. Ajay Mohan and Dr. K.D. Vashist were members of board of doctors for conducting the postmortem examination and on that day she along with above said doctors conducted the postmortem examination on the dead body of Shweta Singh wife of Sandeep Tomar, resident of Army Cantt Abohar vide postmortem report No.PMR/18/AC/2013. Date and hour of death was 09.07.2013 at 3.20 PM. No ligature mark was present. Larynx and trachea was congested. Hyoid bone intact. Following injuries were found on the dead body:-

(1) 3 x 1 CM abrasion on right side of chin lower side.

(2) 7 x .25 CM abrasion left side of chin of lower side.

14. She has further deposed that on dissection of injuries underlying tissues congested and clotted blood was present. On dissection of chest silicon breast implant on each side was present. It is plano convex in shape 9 CM in diameter. She further opined that the probable time between injury and death was within minutes and between death and postmortem 24 to 48 hours. She has also proved on record the postmortem report as Ex.PG and pictorial diagram showing the seats of injuries as

Ex.PH. She has further deposed that on receipt of Chemical Examiner Report Ex.PI, the cause of death declared by the board of doctor i.e. by her and Dr. K.D. Vashist was due to poisoning as a result of Oregano Phosphorus Pesticide. She has proved on record the copy of opinion as Ex.PJ, which was bearing her signatures and she also identified the signatures of Dr. K.D. Vashist on it.

15. PW-6 SI Raj Kumar No.863/ASR, Investigating Officer of the case had stated that on 09.07.2013 he was posted at Police Station City-I Abohar and on 9.30 AM a telephone message was received from Army Cantt Abohar regarding committing of suicide by a lady in the Army Cantt. In this regard, DDR Ex.PK was entered. Then he along with other police officials visited Army Cantt Abohar where Subedar Raj Kumar met him in the Army Hospital. He handed over the dead body of deceased Shweta Singh and her wearing apparels, which were converted into a parcel and sealed with his seal bearing impression 'RK' and took into possession vide recovery Memo Ex.PL. Dead body of Shweta Singh was shifted to Civil Hospital Abohar and the parcel containing clothes of Shweta Singh was deposited with MHC. He has further stated that on 10.07.2013, he along with other police officials visited Civil Hospital Abohar, where Ram Naresh Singh father of deceased Shweta Singh met him and he recorded his statement Ex.PB. He also put his endorsement Ex.PN on statement Ex.PB and recorded police proceeding Ex.PO and the statement Ex.PB along with police proceedings were sent to Police Station City-I Abohar, on the basis of which formal FIR Ex.PQ was registered by SI Satwant Singh. He also prepared inquest report Ex.PR and recorded statements of witnesses under Section 175 Cr.P.C. Dead body was handed over to HC Hans Raj along

with LC Gurbinder Kaur with written police request Ex.PS regarding postmortem examination of deceased Shweta Singh. Then he along with other police officials visited Army Cantt i.e. place of occurrence, where Captain Chandel and army official PC Mishra met him and he along with Captain Chandel and army official PC Mishra visited the quarter of Sandeep Tomar and inspected the spot from where one lady sari was taken into police possession, which was turned into a parcel and was sealed with his seal bearing impression RK and was taken into police possession vide Ex.PT. He has also taken into police possession golden ornaments as detailed in recovery memo Ex.PA and prepared a rough site plan of place of recovery Ex.PU. On returning to police station, HC Hans Raj produced before him belongings of deceased Shweta Singh, which were taken into possession vide memo Ex.PV. On 15.07.2013, Captain Sandeep Tomar was handed over to him by the Army authorities and he was arrested in this case vide arrest memo Ex.PD and intimation memo Ex.PE was also prepared. On 17.07.2013, dowry articles were sent through bulity by Mangal Singh from Kanpur and the same were taken into police possession vide recovery memo Ex.PF. On 24.07.2013, Ram Naresh Singh and his wife Rani came present in the police station and the gold and silver ornaments were got identified from them, by R.N. Singh and the identification memo Ex.PC was prepared. After completion of investigation of this case, challan against accused was presented in the Court by Inspector Balkar Singh of Police Station City-I Abohar. He also visited State Bank of India, Branch Kanpur and collected statement of account of Mangal Singh Ex.PAC, draft in favour of Mangal Singh of Rs.10 lacs dated 07.02.2012 by Ram Naresh Singh as Ex.PAD. He also collected bills of dowry articles in the name of

R.N. Singh which were exhibited as PAE to PAH.

16. PW-7 Dr. K.D. Vashisht, Medical Officer, Civil Hospital Abohar has also stated that he was one of the members of board of doctors for conducting postmortem examination of deceased Shweta Singh. He has deposed on the similar lines as PW-5 Dr. Amita Chaudhary.

17. PW-8 Dr. K.L. Patidar, Medical Officer, 416 Field Hospital, Abohar, has stated that on 09.07.2013 he was Duty Medical Officer in Military Hospital Abohar. On that day at about 7.30 AM Sandeep Tomar brought his wife namely Shweta Singh in unconscious, non-responding state, with no sign of life. As per the alleged history given by Sandeep Tomar, he found her hanging from ceiling fan by her dupatta at around 7.10 AM. He brought her down by cutting the dupatta and immediately brought her to the hospital. On examination, there was ligature mark at upper end of neck below the chin 3 x 2 CM and on lateral and posterior aspect of neck. Old surgical scar was just below both breast 5 CM in length. Body is clammy and cold. No pulse, recordable BP, breathing or respiratory sound. On auscultation no heart sound heard. Pupils dilated and fixed not responding to light bilaterally. Immediately CPR started and gastric lavage done. CPR continued for 30 minutes. In spite of extensive efforts of CPR patient could not be revived. Declared dead at 8.05 AM on 09.07.2013. **Diagnosis-** found dead? Asphyxia due to hanging. Cause of death to be ascertained after autopsy report. He has also produced on record the report of medico legal case Ex.PW and handing over and taking over certificate of dead body Ex.PX., medical certificate Ex.PY regarding cause of death of all ranks, which bears his signatures.

18. PW-9 HC Hans Raj No.609/FZK, summons staff Abohar, has

stated that he was a witness to memo Ex.PX, which was prepared regarding handing over the dead body of Shweta Singh to SI Raj Kumar and the recovery memo Ex.PL, which was prepared regarding taking over the possession of clothes of deceased. He has also deposed that MHC Sarabjit Singh of Police Station City-I Abhohar handed over him viscera of this case for depositing the same in the office of Chemical Examiner Kharar and he deposited the same in the office of Chemical Examiner in intact condition against proper receipt and on returning to the police station, he handed over the receipt to MHC.

19. Thereafter, statement of accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing in the prosecution evidence against him, were put to him. But he denied the same alleging that he was innocent and had been falsely involved in this case: he had never demanded any dowry from his wife or from her parents. He had never beaten Shweta Singh regarding demand of dowry and had never harassed his wife or parents of his wife for demand of dowry. After two days of marriage on 14.02.2013, he had gone for honeymoon along with his wife Shweta Singh and after their honeymoon, they came back to Abohar Cant. His parents never visited at Abohar to meet them. His father-in-law Ram Naresh Singh and his mother-in-law Rani Singh also never came to meet them at Abohar Cant. On the demand raised by his father-in-law Ram Naresh Singh, he had sent Rs.20,000/- to his father-in-law through his bank account from Abohar to Lucknow. On 08.07.2013 at about 4.30 PM, he along with his wife had gone for shopping to Abohar city and they came back to Abohar Cant after some time. On 08.07.2013, he along with his wife went to Hotel Sethi Regency Private Limited at about 9.00/9.15 PM for

dinner and came back to Military area after taking dinner. He had paid the bill of the said hotel by his SBI Card. On 09.07.2013 in the morning he had gone for morning walk at about 5.15 AM from his quarter and came back at about 7.00 AM. When he entered into his quarter, he saw Shweta Singh lying in the room up side down on the bed. He checked her but she did not respond to him and immediately he took her to Military Hospital Abohar, where the doctors after check up shifted her to ICU unit, and after half an hour, the doctors declared her dead, and the doctor asked him for postmortem examination of Shweta Singh. He signed his consent for the same. Then immediately he called Ram Naresh Singh his father-in-law, and intimated him regarding the death of Shweta Singh through mobile No.7508363525. After that Ram Naresh Singh called on Shweta's phone and he attended the same and told him about death of Shweta Singh. He or his parents never demanded any dowry from Shweta Singh or from her parents. He had never made any harassment or cruelty to Shweta Singh regarding demand of dowry.

20. During his defence evidence, the accused examined DW-I HC Jagtar Singh, AMHC and DW-2 HC Kuldeep Singh No.679/Tarn Taran, MHC of Police Station City Tarn Taran and closed the defence evidence.

21. The learned trial Court had formulated the following point for determination:-

“What offence, if any, has been committed by the accused”.

22. After considering the evidence on record and hearing the arguments, the trial Court decided this point holding that accused Sandeep Tomar had committed murder of Shweta Singh by administering her poisonous substance i.e. Organophosphorus compound pesticide. The

accused was held guilty for an offence under Section 302 IPC and convicted accordingly, as detailed above.

23. Feeling aggrieved by the judgment of his conviction and order of sentence, the appellant has filed the present appeal.

24. We have heard learned counsel for the appellant-accused and learned State counsel and have also gone through the record minutely.

25. The judgment of trial Court has been assailed by the learned counsel for the appellant on various points. First of all he has opened up his arguments with the contention that the appellant never demanded any dowry from his wife Shweta Singh and never harassed her on that account. He was having cordial relations with his wife and was taking care of her nicely. He has contended that it has not been proved that Shweta Singh was subjected to cruelty due to demand of dowry by the accused. But this contention of learned counsel for the appellant is without any substance. The cruelty and harassment for dowry of Shweta Singh at the hands of the accused, stands duly proved from testimony of her father PW-2 Ram Naresh Singh, who is also the complainant in the present case. He has categorically stated that on 08.07.2013, he talked to his daughter Shweta Singh at 5.00 pm, who apprised him regarding the harassment meted out to her and beatings being given to her by the accused for dowry. She also disclosed to him that her husband was insisting for transfer of the plot in his name, which was in the name of her mother. He had again categorically stated that on the same day at 9.30 PM, his wife also talked to her daughter Shweta Singh and she again repeated the same facts to her mother also, who later on disclosed to him.

26. He has been duly corroborated in this respect by PW-3 Rani Singh, who happens to be the mother of the deceased. She has deposed on

the similar lines as PW-2 Ram Naresh Singh complainant. So both PW-2 and PW-3 have specifically deposed that the deceased was being subjected to cruelty and harassment by her husband, in connection with demand of dowry. From their testimony, it is also proved that, soon before her death also she was subjected to such cruelty and harassment at the hands of her husband for demand of more dowry. PW-2 and PW-3 being the parents, it is but natural, that their daughter would have definitely shared with her parents, if she was being subjected to cruelty and harassment at the hands of her husband, for demand of more dowry and as such, they were the best persons to depose about the same.

27. Otherwise also from the circumstantial evidence on record, it comes out that handsome amount was spent by the parents of deceased at the time of her marriage. It is proved from statement of the investigating officer PW-6 Raj Kumar that draft of Rs.10 lacs was received by the father of the accused at the time of marriage. It appears that such huge amount was given as per the terms settled at the time of the marriage and it smacks of greedy nature of accused and his lust for dowry which obviously led to murder of his wife at his hands.

28. It has been argued by learned counsel for the appellant that no such complaint was filed earlier by deceased or her parents regarding the cruelty and harassment or demand of more dowry, so it is an after thought and a false story has been concocted to falsely involve the accused. But again we do not find any force in the above said contention. If the matter was earlier not reported to police or Panchayat by the deceased or her parents, then as per mind-set of our Indian society it cannot be termed as abnormal conduct. Generally, the girl herself and the parents make best

efforts for settlement and adjustment with the husband and his family and they do not want to spoil the things by washing the linen in the public. In the instant case also the marriage was only about 5 months old and obviously deceased Shweta Singh and her parents were making efforts for her adjustment in the new marriage. PW-3 Rani Singh has categorically stated during her cross-examination that they had not complained against Sandeep Tomar regarding beating for demand of more dowry to any authority, as they wanted to settle their daughter. So if earlier matter had not been reported to the police or Panchayat by the deceased or her parents, then it is not fatal to the case of the prosecution. Thus sufficient evidence is on the record to prove that Shweta Singh was subjected to cruelty and harassment by her husband, in connection with lust of more dowry.

29. Next it has been argued by learned counsel for the appellant that there is a delay of 24 hours in lodging of the FIR. Deceased Shweta Singh died on 09.07.2013 at about 7.00 AM and her death was immediately reported to the police. But statement of Ram Naresh Singh (father of the deceased) was recorded by the police on 10.07.2013 at about 10.00 AM and the FIR was lodged by the Police thereafter, which clearly indicates that the FIR was lodged by Ram Naresh Singh after due deliberation and consultation. But we are not inclined to accept the above-said contention raised by learned counsel for the appellant. Admittedly, the parents of deceased Shweta Singh are residents of Lucknow. The appellant and the deceased Shweta Singh were putting up in the house, which was situated in cantonment area of Abohar, District Fazilka. When the parents of Shweta Singh got the information in the morning on 09.07.2013 regarding death of their daughter then they left for Abohar. As Abohar is situated at very long

distance from Lucknow, so they reached at Abohar during the night. On the next morning, they visited Civil Hospital, Abohar, where the dead body of their daughter was lying and then police recorded the statement of Ram Naresh Singh father of the deceased at about 10.00 AM. So as the parents of Shweta Singh were residing at a very far away place from Abohar, delay in lodging of the FIR has been satisfactorily explained by the prosecution. This delay is not of such a nature that could entail any benefit to the accused.

30. From the evidence on record, it also transpires that the appellant was not happy with the physical appearance of his wife Shweta Singh. This fact stands proved from testimony of PW-3 Rani Singh, who is mother of the deceased. She has deposed that Shweta Singh came to Lucknow on 05.03.2013 and returned to Abohar on 10.04.2013 alone. Breast operation of her daughter was conducted during that period from Vivekananda Hospital. She has specifically stated that she was not suffering from any decease. As accused was not happy so her daughter had got enlarged her breasts. She used to call accused on phone during that period, but he did not call her.

31. In the postmortem report of deceased Ex.PG also, it has been specifically mentioned that on dissection of chest silicon breast implantation on each side was present. So obviously the deceased opted to undergo surgery for enlargement of her breasts, when she realized that her husband was not happy with her physical appearance.

32. It has been vehemently argued out by learned counsel for the appellant, that the cause of death of deceased Shweta Singh has not been proved and there are two conflicting medical opinions on record, regarding

cause of her death. He has contended that as per PW-8 Dr. K.P. Patidar, who firstly examined Shweta Singh, no smell was coming out from body of Shweta Singh and has opined that there were ligature marks at upper end of neck and below the chin 2 x 3 cms on lateral and posterior aspect of the neck. He diagnosed the cause of death as Asphyxia due to hanging. But as per the opinion regarding cause of death, given by the board of doctors of Civil Hospital Abohar, no ligature mark was present on the body of the deceased and after receiving of the report of the chemical examiner the cause of death was declared by the board of doctors due to poisoning as result of Organophosphorus compound pesticide.

33. After going through the testimony of PW-8 Dr. K.P. Patidar, it transpires that he has not given any specific opinion regarding the cause of death of deceased and rather stated that cause of death was to be ascertained after the autopsy report. So in fact there is no conflicting opinion regarding the cause of death of deceased Shweta Singh as has been contended by the learned counsel for the appellant. Though PW-8 Dr. K.P. Patidar has stated that no foul smell was coming from body, yet the viscera report cannot be ignored on the basis of this verbal observation, especially when this witness has wrongly stated regarding existence of the ligature marks on the neck of the deceased. The board of doctors consisting of PW-5 Dr. Amita Chaudhary and PW-7 Dr. K.D. Vashist and Dr. Ajay Mohan, who were medical officers of Civil Hospital, Abohar, have clearly stated that no ligature marks were present and hyoid bone was found intact. They have given the specific cause of death, only after receipt of the chemical examiner report Ex.P-I. A perusal of the chemical examiner report Ex. P1 reveals that it has been specifically mentioned therein that Organo

phosphorus compound pesticide was detected in the viscera of the deceased.

PW-5 Dr. Amrita Chaudhary has proved on record the copy of opinion of death as Ex.PJ. So this is sufficient to prove that death of deceased took place due to Organo phosphorus pesticide found in her body. So this contention of learned counsel for the appellant pales into insignificance that cause of death has not been proved in the present case.

34. We do not feel inclined to agree with this contention of learned counsel for the appellant that chemical examination report Ex.PI given by Dr. R.P. Singh cannot be relied upon, as earlier two FIRs were registered against him for giving false reports. It does not reflect upon this case's chemical examination report, if in some other case FIR had been registered against him for giving false report, especially when there is no such material on record to suggest that the chemical examination report Ex.P-1 is incorrect.

35. While appearing as PW-5 she has specifically stated that following injuries were found on the dead body:-

1. 3x1 CM abrasion on right side of chin lower side
2. 7x.25 cm abrasion left side of chin of lower side.

36. She further stated that on dissection of injuries underlying tissues congested and clotted blood was present. During her cross-examination also she has categorically stated that there was injury on the chin of both sides of deceased and there was no ligature mark on the neck of deceased. But surprisingly Dr. KL Patidar failed to notice any such injuries. So possibility cannot be ruled out that perhaps either this witness was trying to help the accused or was very casual in examining her.

37. Trial Court has rightly observed that firstly the accused tried to

set up a case of suicide by Shweta Singh and then changed his mind in the statement recorded under Section 313 Cr.P.C. PW-8 Dr. K.L. Patidar, Medical Officer, Field Hospital, Abohar, has stated that as per alleged history given by Sandeep Tomar, he found his wife Shweta Singh hanging from ceiling fan by her dupata. But no such witness has been examined, who saw Shweta Singh hanging from ceiling fan. Even the medical evidence is not supporting this suicide version, as PW-5 Dr. Amita Chaudhary and PW-7 Dr. K.D. Vashist have specifically stated that no ligature marks were found on the neck of the deceased and the Hyoid bone was found intact. During the statement recorded under Section 313 Cr.P.C, the accused has set up a new story while stating that after returning from morning walk, he found his wife lying up side down on the bed.

38. In his statement recorded under Section 313 Cr.P.C., the accused is very specific that he saw Shweta Singh lying upside down on the bed contradictory to the history as given to PW-8 Dr. Patidar that he had seen her hanging with ceiling fan by her dupatta and he brought her down by cutting her dupata and then immediately brought her to the hospital. So the early version of alleged suicide has been completely washed out by him.

39. Law is quite well settled that the burden to prove the guilt of accused is upon the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused or are virtually impossible for the prosecution to prove. These facts need to be explained by accused and if he does not do so, then it is a strong circumstance to pointing to his guilt based on those facts. In **Dnyaneshwar Vs. State of Maharashtra, 2007 (10) SCC 445**, it was held by the Hon'ble Apex Court that “deceased found murdered in her matrimonial home; possibility of any outsider committing

the offence ruled out; Held, when couple was last seen in a premises to which an outsider may not have any access, it was for the husband to explain the ground for unnatural death of his wife.”

40. Reliance can further be placed upon State of Rajasthan Vs. Thakur Singh, 2014(12) Supreme Court Cases 211, wherein it was held that “unnatural death of wife of accused in a room occupied only by both of them; No evidence of anybody else entering the room; Facts relevant to cause of death being only known to accused and he not explaining them; principle under Section 106 of the Evidence Act, 1872 (for short ‘the Act’), clearly applicable; there is strong presumption that accused murdered his wife.”

41. Now applying the ratio of law laid down in the cases supra, Shweta Singh died unnatural death in her matrimonial home, which was only being shared by her husband. So cause of unnatural death was known to accused, but he chose not to disclose it or explain it. As already observed, as per the postmortem report, there were two abrasions on both the sides of chin of Shweta Singh, which indicates that struggle had taken place at the time of administering the poisonous substance to the deceased. It proves that the force had been used by the person who administered the poisonous substance to deceased Shweta Singh. It is not that accused was obliged to prove his innocence or prove that he had not committed any offence and all that was required to explain the unusual situation regarding unnatural death of his wife in their room and he had not been able to do so. So principle laid down in Section 106 of the Act is clearly applicable to the facts of the present case and therefore, there is a very strong presumption that Shweta Singh was murdered by accused.

42. The plea of *alibi* taken by the accused is also not proved. It is incumbent on the accused who has taken the plea of *alibi* to prove it with absolute certainty so as to completely exclude the possibility of his presence at the place of occurrence. In **Binay Kumar Singh Vs. State of Bihar 1998(1) RCR (Criminal) 620**, it has been held by the Hon'ble Apex Court that the "latin word *alibi* means "elsewhere" and that word is used for convenience when an accused takes the recourse of a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime." The burden on the accused is rather heavy, which follows therefore that strict proof is required for establishing the plea of *alibi*.

43. Now adverting to the facts of the present case, besides the bare plea of accused taken in the statement under Section 313 Cr.PC, there is not even *iota* of evidence on record to prove this plea of *alibi* taken by accused. It does not appeal to reason that if from 5.15 AM till 7.00 AM, the accused was taking morning walk in the cantonment area, but nobody had seen him while taking the morning walk. As no such witness has been examined who had seen him while taking morning walk during this time, so plea of *alibi* is not proved.

44. Thus, the conspectus of the events which have been noticed, goes to show that the deceased Shweta Singh was being treated with cruelty and was being harassed by her husband for more dowry and was ultimately murdered by him for lust of dowry.

45. Learned counsel for the appellant has placed reliance upon **Sharad Birdhichand Sarda Vs. State of Maharashtra, 1984 Supreme Court cases (Crl) 487, Sabitri Samantaray Vs. State of Odisha, 2022**

Live Law (SC) 503, Satye Singh & another Vs. State of Uttarakhand, 2022 Live Law (SC) 169, Nagendra Sah Vs. The State of Bihar (Criminal Appeal No.1903 of 2019), decided on 14.09.2021 and Sh. Yashu Vs. The State, (Criminal Appeal No.455 of 2020) decided on 31.10.2022. But the case law cited by learned counsel for the appellant is of

no help him, the same being not applicable to the facts of the case in hand.

46. Thus, the prosecution has successfully proved and established the guilt of the appellant beyond shadow of reasonable doubt and no illegality or irregularity has been found out in the judgment passed by learned trial Court. Consequently, the findings as recorded by the learned trial Court are upheld.

47. For the aforesaid reasons, the appeal being devoid of any merit, stands dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

19.12.2022
monika

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No