

\$~

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

% **Reserved on: 07.03.2023**

Decided on: 22.05.2023

+ **CRL.A. 1383/2019**

MOHD. JULKAR NAIN ANSARI

..... Appellant

Represented by: **Mr. Kanhaiya Singhal and Mr. Ujwal
Ghai, Advocates.**

versus

STATE

..... Respondent

Represented by: **Mr. Laksh Khanna, APP for the State.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J :-

1.0 Vide this appeal, the appellant is assailing the judgment dated 23.08.2019 ('**impugned judgment**' in short) passed by Ld. ASJ, FTC, E Court, Shahdara, Karkardooma Courts, Delhi, convicting the appellant for murder of his wife Shahjahan ; and order on sentence dated 30.08.2019, sentencing him to life imprisonment under Section 302 IPC with fine of Rs.10,000/-, in default to undergo simple imprisonment for six months.

2.0 Briefly stating, case of the prosecution is, that on 24.02.2015 at about 02.47 p.m. a call was received at PS Jafrabad that at H.No.C-1312, Gali No. 13/1, Near Panchayati Dharamshala, Chauhan Bangar, tenant of the caller

has committed murder of his wife Smt. Shahjahan. Said information was recorded vide DD No.16-A (Ex.PW8/A), which was assigned to PW-21 Inspector C.L.Meena, who along with HC Shiv Kumar (PW-6), Ct. Ajay Kumar (PW-7) & Ct. Krishan went to the spot. The said house was built upto fourth floor and, one dead body was lying on a folding iron cot in outer room on the ground floor. One Nafees (PW-15) S/o. Yusuf, relative of the landlord, informed that body is of Smt. Shahjahan W/o. Julkar Nain/the appellant ; and that her husband/appellant has confessed in their presence that he has killed his wife by strangulation and that they have caught hold of him. Meanwhile, HC Sanjeev (PW-5) and Ct. Krishan also reached the spot and custody of the appellant was handed over to them. On checking the dead body, marks of strangulation were found on the neck of the deceased. Nafees (PW-15) and other persons, present at the spot also informed that since morning the appellant was telling that his wife was ill. However, when she was being taken to Shastri Park hospital, the appellant compelled them to return and on asking the reason, he told that he wanted to take his wife to his sister's house and said "*Main Phans Jayunga*". On which they got suspicious and checked the deceased and found injury marks on her neck and face. They brought back the deceased and the appellant to their house and made the deceased lie on a cot. Enquiries were made with the appellant, who admitted that he killed his wife by strangulation. The tenanted room of the appellant at first floor was inspected. Crime team was called. During investigation, in presence of other staff also, the appellant confessed to have killed his wife by strangulating her with *chunni* and pressing her neck, as he suspected her character. The appellant also got recovered *chunni* with which he strangled the deceased. The appellant was arrested vide arrest memo

Ex.PW6/A. Post mortem of the dead body was got conducted vide post mortem report Ex. PW11/A and thereafter, the body was handed over to the relatives.

3.0 Dr. Vishwajeet Singh, PW-11, Sr. Demonstrator, Forensic Medicine Department, UCMS and GTB Hospital, Delhi who conducted post mortem vide his report Ex. PW11/A and subsequent opinion Ex.PW11/B, observed and opined as under:

“POST-MORTEM REPORT (Ex. PW-11/A)

*DEPARTMENT OF FORENSIC MEDICINE
UCMS AND GTB HOSPITAL, Delhi-110095*

POSTMORTEM REPORT No. 239/15

*Date & Time of receiving dead body and Inquest Paper : 25/02/15
at 2.00 pm*

Date & Time of starting autopsy : 25/02/15 at 2.10 pm

Date & Time of concluding autopsy : 25/02/15 at 3.30 pm

Body brought & Identified by

.....

Name of deceased : Smt. Shahjahan Husband : Mohd. Julkar Nain

Age 32 years Sex : Female

Address : H. No. C-1312, G. No. 13/1, Chauhan Bangar, Delhi.

*Brief history of the case (As per Inquest Paper) : Alleged history of
found dead on 24/02/2015 at 2.47 PM vide DD no. 16 A.*

.....

*(A) **General Observation** : Dead body of an adult female wrapped in white sheet and wearing violet salwar, green colour maxi with black prints, pink panty with white prints and white chunni with blue prints. Eyes closed, mouth partially open. Face congested. **Subconjunctival hemorrhage present in both eyes.** Rigor mortis passing off. Postmortem staining present over back and fixed, greenish discolouration over chest, abdomen. Ligation material not present around neck. All other natural orifices NAD.*

(B) Details of External Injuris (Antemortem) :

(1) **Redish brown, dry hard, abraded ligature marks is present incompletely and horizontally below thyroid cartilage.** In the midline the ligature mark is 3.8 cm wide and 6.4 cm below chin. **The ligature mark on right side goes horizontally and backwards and is 3.8 cm wide and 4 cm below angle of mandible.** Mark goes further horizontally backwards and is 2.8 cm wide and 7 cm below right mastoid and further disappears. **On the left side, the marks goes horizontally and backwards and is 3.5 cm wide and 4 cm below angle of mandible.** Mark goes further horizontally backwards and is 2.8 cm wide and 7 cm below left mastoid and further disappears. Mark is absent posteriorly for a distance of 8 cm. Neck circumference is 32 cm.

(C) Internal Examination :

1. Head and Neck

Brain – 1219 gm congested

Neck - **Bruising of bilateral Carotid sheath** and neck muscles present with extravasations in surrounding tissues.

.....

(H) **Opinion : Time since death of about one and a half day.**

Cause of death- Asphyxia as a result of Antemortem ligature strangulation. Injury no. 1 is sufficient to cause death in ordinary course of nature.

... ..”

3.1 Subsequent Opinion Ex.PW11/B :

“

Received one sealed pulinda

..... **Ligature material (chunni).** On one side of pulinda FIR no. 132/15 dt. 24/2/15 u/s 302 IPC, PS– Jafrabad written in blue ink. On opening the pulinda, **one yellow colour chunni with blue prints present. The length of chunni is 211 cm and width is 55.5 cm.**

Opinion :-

After going through postmortem report and examination of the article given, I am of the opinion that the ligature mark present

around neck of deceased, corresponds with the alleged ligature material (chunni) given for examination.

.....”

4.0 After completion of investigation, charge-sheet u/S. 302 IPC was filed before the Court.

5.0 The prosecution in order to prove its case, examined 21 witnesses in all. Appellant chose not to lead any evidence in his defence.

6.0 Ld. Counsel for the appellant argued that this case is based on circumstantial evidence and the prosecution has miserably failed to connect chain of incriminating circumstances to the appellant. It was submitted that as per prosecution, the incident came to light in the morning whereas call at number 100 was made in the afternoon at about 02:47 p.m. i.e. after a delay of about eight hours, which has remained unexplained. Further, extra judicial confession on the part of the appellant, is alleged, but the most relevant witness Sufiyan, the appellant's brother-in-law Sufiyan was not produced. He also argued that the prosecution has claimed that the appellant had even disclosed to his landlord (PW-13) Mohd. Mehmood, his wife Smt. Anwari Begum (PW-17) and his son Mohd. Sajid (PW-16) about having killed his wife. Whereas PW-13 stated that the appellant disclosed about killing his wife to Sufiyan (who has not been examined), who came out and informed everyone. Story of extra judicial confession is falsified even by evidence of PW-1 Hasim Mohammad, who simply stated that later on he came to know that the appellant killed his wife. PW-14 Mohd. Wakil did not

mention anything about extra judicial confession in his testimony. Rather, he stated that the appellant had admitted his guilt when he was beaten by police officials. Further, PW-15 also cannot be relied as he has stated that all the facts were revealed to him by PW-17 Smt. Anwari Begum. PW-17 is even otherwise not trustworthy as she evidently deposed to save her own son Sajid (PW-16). Thus, it is clear that the extra judicial confession by the appellant, if any, was made under coercion and beatings by in-laws and the police and therefore, cannot be relied upon. In support, reliance was placed on the judgments of Hon'ble Supreme Court in *Sahadevan vs. State of Tamilnadu*, (2012) 6 SCC 403, *Chanderpal vs. State of Chhatisgarh*, 2022 AIR (SC) 2542, *Shailendra Rajdev Pasvan vs. State of Gujarat*, (2020) 14 SCC and *Jagroop Singh vs. State of Punjab*, (2012) 11 SCC 768.

6.1 Ld. Counsel further argued that even recovery of *chunni* (weapon of offence) at the instance of the appellant has not been proved in view of the fact that *chunni* was already mentioned by the crime team in crime inspection report Ex.PW2/A and the same has even come in the testimony of PW-2 SI E. S. Yadav, Member Crime Team, who stated that one printed *chunni* (yellow and blue) was found lying on the mat in that room/spot. Whereas, the appellant was arrested later at 09:45 p.m. vide memo (Ex.PW6/A) and only thereafter, his disclosure statement was recorded, which allegedly led to the recovery of *chunni*, which had already been recovered as per crime team report.

6.3 Ld. Counsel further argued that even presumption u/S. 106 Indian Evidence Act can not be drawn against the appellant as even others had

access to that room, where the deceased was found. Particularly as the appellant was sleeping in another room on the intervening night of 23.02.2015 and 24.02.2015. The fact that the appellant was allowed to use another room situated next to the room in their occupation at first floor has come in the testimony of PW-13 Mohd. Mehboob. He also argued that the appellant's children, who were living with them were not produced.

6.4 Ld. Counsel further argued that even forensic evidence does not connect the appellant to the crime as no DNA evidence has been found either in the deceased's nail scrapping or any body part and even on the *chunni*.

6.5. Lastly, the Id. Counsel for the appellant submitted that the motive assumes great importance in case of circumstantial evidence. But the prosecution has failed to prove any motive on the part of the appellant to murder his wife. Rather it has come in the testimony of PW-13 Mohd. Mehboob that the appellant and his wife were happily residing and they never heard any quarrel between them nor did the appellant's wife ever made a complaint in this regard. Thus, the prosecution has failed to prove its case.

7.0 *Per contra*, the Ld. Prosecutor argued that PW13/Md. Mehmood has deposed that the appellant was his tenant and was residing in the rented premises along with his wife/deceased namely Shahjahan and two children; and on the day of the incident i.e. 24.02.2015 at about 06:30 a.m., he came down and asked for the key of the main gate from his wife PW-17 telling that the deceased was suffering from diarrhoea since last night. Thus evidently, the appellant was present with the deceased in the intervening

night of 23.02.2015 and 24.02.2015 i.e. at the time of the incident. In view Section 106 of the Evidence Act it was for the appellant to give a cogent explanation as to what transpired on the intervening night of the incident, but he failed. The appellant cannot get away by keeping quiet and placed reliance upon the judgment in *Trimukh Maroti Kirkan vs. State of Maharashtra [2006] 10 SCC 681*, in support.

7.1 Ld. Prosecutor further argued that the appellant attempted to hide the death of the deceased as has come in the testimony of PW17/Anwari Begum that while the deceased was being taken to the hospital, on the way, the appellant asked to take the deceased to his sister's house. On enquiry in that regard, the appellant responded by saying "*mai phas jaunga*", which is corroborated by PW16/ Mohd. Sajid.

7.2 Ld. Prosecutor also contended that the *chunni* (Art.1/PW14), by which the deceased was strangled, was recovered vide seizure memo Ex.PW6/D from the tenanted premises in occupation of the deceased, who was living with the appellant. Recovery of *chunni* is also proved by PW14/ Md. Wakil, who was present at the time of seizure of *chunni* and identified the same in court. It was also argued that as per the post mortem report Ex.PW11/A the cause of death of the deceased is "*Asphyxia as a result of antemortem ligature strangulation. Injury no. 1 is sufficient to cause death in ordinary course of nature*" and as per subsequent opinion, the ligature mark present around neck of deceased, was found to correspond with the alleged ligature material (*chunni*). Thus, it was proved that the death of the deceased was homicidal in nature and caused by the recovered *chunni*.

7.3 Ld. Prosecutor also argued that even the motive on the part of the appellant has come out in cross-examination of PW-13/Mohd. Mehmood and PW-17/Anwari Begum, that the deceased was having an illicit relations with their son PW-16/Sajid. Thus, it is clear that the appellant doubted the character of the deceased.

7.4 Ld. Prosecutor further argued that the appellant has not only taken false plea of *alibi* by way of suggestion to PW-13 Mohd. Mehmood and in his statement u/S. 313 Cr.P.C. He also took contradictory defences. To PW-13 it was suggested that he was sleeping in another room whereas in his statement u/S. 313 Cr.P.C, the appellant stated that he was working in his factory situated at a distance of 100 meters and was not present at home in the night of incident i.e. 24.02.2015 and had returned from factory at 06:30 a.m. The appellant even failed to lead any defence evidence to prove his plea. Same calls for drawing of an adverse inference against the appellant and reliance on the judgment in ***Sahabuddin v. State of Assam, (2012) 13 SCC 213*** was placed in support.

7.5 Ld. Prosecutor also argued that the appellant had confessed about committing the murder of the deceased in the presence of number of witnesses including PW-16/ Mohd. Sajid and PW17 Anwari Begum, which is in the nature of extra judicial confession. Same further supports the prosecution case and placed reliance on judgment in ***Munna Kumar Upadhyaya Vs. The State of Andhra Pradesh Through Public Prosecutor, Hyderabad, Andhra Pradesh, (2012) 6 SCC 174***, in support.

7.6 Ld. Prosecutor submitted that in view of the above evidence, the prosecution has successfully established the guilt of the appellant and the Ld. Trial Court rightly convicted the appellant and has appropriately sentenced him to life imprisonment.

8.0 We have duly considered the submissions made by both the sides.

9.0 PW-13 Mohd. Mehmood deposed that the appellant was residing as tenant along with his wife Shahjahan and two sons in a kitchen situated at first floor of his house at the rent of Rs.500/- - 600/- for the last two-three months. On 24.02.2015 at about 06:30 a.m., the appellant came down and asked for the key of the main gate of the house from his wife (PW-17) as he wanted to go out. His wife asked him (PW-13) about the key and he informed her about the place and thereafter, his wife handed over the key to the appellant and then left for morning walk. Within 2-3 minutes, the appellant again came back and started calling for his (PW-13's) wife. As his wife (PW-17) had already left home, he asked the appellant the reason for the same. The appellant replied that his wife was ill and was not able to speak, on this, he along with his younger son Sahil went to the room of the appellant at First Floor, where he found that wife of the appellant was lying on the mat; and on enquiry, the appellant informed that the deceased was suffering from diarrhoea since last night. He then came down and went outside and brought one e-rickshaw to take the appellant's wife to the hospital. In the meantime, his wife (PW-17) also returned from park and they brought down the appellant's wife (deceased) from first floor and made her

sit in e-rickshaw, his wife sitting on one side and the appellant on the other side. They followed the e-rickshaw. He also deposed that when e-rickshaw reached at a distance of 200-300 meters from the house, the appellant stopped the e-rickshaw ; and on enquiry, he told that he wanted to take his wife to the house of his sister at Mayapuri. He (PW-13), however, insisted upon the appellant to take his wife to the hospital but the appellant refused by stating that she was no more. They then returned home and the body of Shahjahan/deceased was made to lie on the cot at ground floor. On checking the dead body they found that there was a mark on the neck of Shahjahan/deceased and her face started becoming blackish.

9.1 PW-13 further testified that the appellant informed his father-in-law (PW-14), who arrived within 1½ hours along with his relatives. On their arrival, he (PW-13) requested them to take the appellant in a room and ask him about the real story. At his request, they made enquiry from the appellant but he did not give any satisfactory reply. Sufian, brother-in-law of the appellant also arrived and requested all of them to leave him alone with the appellant and accordingly, they left. About 4-5 minutes thereafter, Sufian came out and informed that the appellant had killed his wife as he doubted her character. Accused was beaten by some persons who gathered there. PW-13 also deposed that father of the deceased wanted to make a call at 100 number but he (PW-13) asked him to wait for some time. Thereafter, on his request, Nafees (PW-15) made a call at 100 number at about 02:45 pm. Within five minutes, police personnel arrived and started making enquiry. Deceased's body was taken into custody. As PW-13 resiled from his previous statement, he was cross examined by the learned Prosecutor. In his

said cross-examination, PW-13 admitted that some injury mark was present on the deceased's face, but denied that the appellant had admitted in his presence that he had killed his wife/deceased by strangulating her with the help of *dupatta* and that he was deliberately not telling the true facts about the confession made by the appellant.

9.2 PW-13 stood by his testimony in cross examination. Learned counsel for the appellant himself suggested to PW-13 that the appellant was residing in a small room on rent in their house which was admitted by PW-13, who further stated that in fact, the same was constructed for the purpose of kitchen. PW-13 also stated that at the time of the incident, at first floor only two rooms were occupied by two tenants including the appellant Julkar. PW-13 also stated that that they used to lock the main gate of the house at about 10:00 – 10:30 p.m. and he used to unlock the same in the morning when he left for namaj. He further stated that on the day of the incident, the main gate was opened before sunrise at the request of the appellant; his wife had handed over the keys to the appellant who himself unlocked the gate. He also stated that his wife (PW-17), his daughter Tarannum and the appellant had brought Shahjahan/deceased down from first floor. Shahjahan was not responding while she was brought down and when she was made to sit in e-rickshaw. Though, PW-13 admitted that they used to allow the appellant to use another room situated at the first floor in case of need, he categorically denied that on the night of incident, the appellant was sleeping in another room and his son Sajid (PW-16) had bolted the appellant's room from outside. He also denied that quarrel had started taking place between Sajid (PW-16) and the appellant's wife on the issue of their affair ; and that he has

falsely implicated the appellant in order to save his own son Sajid. PW-13 further denied that they had threatened to kill the appellant's sons if the appellant did not take the responsibility of death of his wife. PW-13 also denied that as the police persons of PS Jafrabad were known to him, he managed to get the appellant falsely implicated in the present case. Thus, PW-13's testimony remained unshaken.

10.0 Testimony of PW-13 that call to police was made at about 2:45 pm is corroborated by PW-4 W/HC Shashi Kala and PCR Form Ex. PW4/A. She has deposed that at about 2:40 pm, she received a call in which the caller informed that *mere kirayedaar ne apni wife ka murder kar diya*", at H.No. C-312, gali no. 13/1, Panchayati Dharmshaala *ke piche*, Chauhan Banger vide PCR Form Ex.PW4/A. The call was forwarded to the concerned PS. PW-8 ASI Satbir, Duty Officer, PS Jafrabaad testified that he received a call about the aforesaid murder at about 2:47 pm and recorded the same vide DD no. 16A (Ex.PW8/A), which was handed over to Inspector CL Meena, SHO Jafrabad, who left for the spot along with HC Shiv Kumar, Ct. Ajay Kumar and Ct. Kishan. The PCR Form Ex. PW-4/A inter alia reads as under:

“
Landing Time 24 Feb 2015 14:40:18 Dispatch 24 Feb 2015
14:42:29

Incident Information- CALLER KE KIRAYEDAR NE APNI WIFE KA MURDER KAR DIYA HAI

PS Name – ZAFRABAD District – North East I

.....
Report Received from MPV: 24/02/2015 15:22:37 CALL IS TRUE MAUKE PAR MOHD. VAKIL S/O MOHD. SHAHID ...NE BATAYA KI MERI LADKI SHAHJAHAN ...KO USKE

HUSBAND NE MAR DIYA HAIN MAUKE PAR ZULKAR AGE 25 YRS KO PAKAR RKHA HAIN JO BATA RAHA HAIN MAINE APNI WIFE KO RAT 2:30 AM PAR MAR DIYA HIAN JO PARAGENENT THI JO BATA RAHA HAIN MAINE APNI WIFE KO CHUNNI SE GALA GOTKAR MARA HAIN MERI WIFE KA DUSRE ADMI SE NAJAYAZ SAMBAND THE LADY KI DEAD BODY MAUKE PAR GARDAN PAR NISHAN HAIN JO MAUEK PAR NISHAN HAIN JO MAUEK PAR ERV 51 SHO WITH STAFF AND 144 C/R INFORMED...

11.0 Testimony of PW-13 is corroborated by Anwari Begum, PW-17, his wife, who deposed on the same lines. PW-17 deposed that in the month of February 2015 (exact date she could not remember) early morning at about 6 am, the appellant came to them and asked for key of the lock of the main gate on the pretext that his wife was ill/was suffering from dysentery. When she told the appellant that he could have informed them earlier, the appellant told that he had given some tablet to his wife. She handed over the key to the appellant, who went out and they helped him in calling rickshaw. She went to the tenanted room with the appellant where she saw his wife lying and did not respond, when she tried to talk to her. She helped the appellant in bringing his wife to rickshaw. While they were taking his wife to hospital, after some distance, the appellant got the rickshaw stopped and on asking the reason for the same, he replied that “*main phans jaunga*”. Her son Mohd. Sajid (PW-16) and her husband (PW-13), who were following them also reached there. Despite her insistence to take the deceased to hospital, the appellant made the rickshaw turn back on the pretext that he wanted to take the deceased to his sister’s house at Mayapuri. On which they became more

suspicious. On returning home, she got the deceased lie on the cot and then inquired from the appellant to tell them about the true facts, but he did not give proper reply. She then asked the appellant to make a call to relatives of the deceased. Then she (PW-17) called her *bhanja* Nafees. Nafees also made inquiries with the appellant and after great persuasion, the appellant admitted that he has committed murder of his wife by strangulation with *chunni*. She noticed that the deceased was having strangulation marks on her neck and her face became bluish. There were also nail mark on the neck of the deceased. Thereafter, the police was informed and it arrived. Parents and brother-in-law of the deceased also reached. Police also saw the body of the deceased and also made inquiries with the appellant pursuant to which, the appellant confessed that he murdered his wife/deceased. Thereafter, the appellant also produced *chunni* stating that he had used the said *chunni* for strangulation. Police got the spot photographed.

11.1 PW-17 stood by her version in cross-examination. With respect to tenants/residents in her house, she stated that tenants were living only on the first floor; there were four tenants at the time of the incident and one room on that floor was vacant. Seven adults were living in different rooms as tenants at first floor. Sajid/PW-16 was working at the top floor of the house. She also stated that when they were taking the deceased towards Shashtri Park Hospital the appellant did not permit them and on the way near Gandhi School, he stopped the rickshaw. She further stated that Sajid had made a call to Nafees who came between 07:00 – 08:00 am.; and that Nafees came first and police came later when the call was made. Though she could not tell the time when police arrived. PW-17 categorically denied that her son Sajid

(PW-16) was having illicit relations with the deceased or that he had killed her. She also denied that Sajid had threatened the appellant to confess to the killing of the deceased otherwise his children would be killed. Thus, nothing of substance could be extracted even in Pw-17's testimony to reflect on her credibility.

12.0 PW-16 Sajid deposed on the same lines as PW-13 and PW-17. He also deposed that they noticed injury marks on the face and neck of the appellant's wife/deceased and her body was turning bluish, when they laid it on a cot. Meanwhile, his cousin Nafees also arrived. On inquiry by them, the appellant told that he murdered his wife by strangulating her with *chunni* as he suspected her. His cousin Nafees made a call at no. 100. Police arrived and made inquiries from the appellant. Even in presence of police, the appellant admitted that he had killed his wife/deceased by strangulation. PW-16 stood by his deposition in cross-examination. He stated that the main door of their house used to be locked at night between 10-11 pm, thus corroborating the version of PW-13 and PW-16. He also stated that his father (PW-13) or mother (PW-17) used to open the door, if required, at late hours. Strangely enough, in cross-examination on one hand, the appellant suggested to PW-16 that electric lock is not installed on the main gate, which he admitted. On the other hand, it was suggested to PW-16 that an electric lock has been installed on the main gate and a key of the same has been given to all the tenants, which he denied. Regarding the distance they had travelled on Rickshaw, PW-16 stated that they might have taken the deceased for about 400/500 meter before returning. But the fact that the rickshaw was turned back, is not disputed. PW-16 was also cross examined

with respect to number of tenants in the said house and on first floor etc. In response to which, he stated that there were five tenants on first floor including the appellant but denied that the room adjacent to the appellant's tenanted room was lying vacant at the time of incident. PW-16 categorically denied that on the day of the incident, the appellant was sleeping in the room adjacent to his tenanted room. He also denied that he was having illicit relations with the deceased or that he has killed her. He further denied that he had threatened the appellant to confess his guilt otherwise, he shall kill the appellant's children. He also stated that his cousin Nafees was called by his mother and it was Nafees who made a call to police which corroborates PW-17's version that Nafees had made a call to police. Though, time of arrival of police mentioned by him is at variance with the record.

13.0. From the above it is seen that the appellant himself suggested to PW-13 Mohd. Mehbood, PW-17 Smt. Anwari Begum and PW-16 Sh. Sajid in their cross-examination that the deceased was having illicit relations with PW-16 Sajid. Such suggestion by the Ld. defence counsel forms part of evidence and can be relied by the court along with the other evidence (*Balu Sudam Khalde and Another vs. State of Maharashtra, 2023, SCC Online SC 355*). Same lends credence to the information recorded in the PCR Form (Ex.PW4/A) to this effect.

14.0 PW-15 Sh. Nafees Ahmad deposed that on 24.02.2015, at about 09:00 or 09:15 a.m., he received phone call from Sajid S/o his *mausi* Smt. Anwari (PW-17), asking him to reach their house immediately. He reached his *mausi's* house behind Panchayati Dharamshala, Chauhan Bangar, H. No. C-

1312, where at the ground floor he saw dead body of a female covered with cloth. Dead body was told to be that of Shahjahan, wife of the appellant, their tenant who resided at first floor in a room-cum-kitchen along with his family including the deceased. Family members of deceased also arrived. On seeing bluish marks on the deceased's neck, they became suspicious and asked the appellant about the same. His *mausi* told him that the appellant told them about killing his wife. During enquiry at first floor, the appellant confessed before them that he had killed her by strangulation; and that he was at ground floor and came to know about the same from *chacha* of the deceased. *Chacha* of the deceased requested him to make a call to police and accordingly, he made a call to police from the phone of Sajid (PW-16). Police reached the spot and made enquiries from the appellant in their presence. The appellant admitted that he had murdered his wife by strangulating her with *duppatta*. Appellant then got recovered said *duppatta* from the first floor room. From the photographs (Ex. PW3/A-1 to Ex. PW3/A-13), PW-13 identified the dead body as that of Shahjahan/deceased, wife of the appellant ; he also identified the room, in which the appellant was residing as a tenant.

14.1 As PW-15 resiled from his previous statement, he was cross-examined by the Ld. Prosecutor. In his said cross examination, PW-15 admitted that after reaching the spot, on enquiry by him and others initially, the appellant repeated the plea of the illness of his wife but thereafter, confessed before them that he strangled his wife Shahjahan with *chunni* and thereafter with hands as he suspected her character. He also stated that he could not tell this fact in his examination-in-chief as he was appearing as a witness in any court

for the first time and due to lapse of time. He however denied that in his statement to the police, he had stated that when the father of Shahjahan namely Mohd. Wakeel (PW-14) came, even in his presence, the appellant had confessed to have murdered Shahjahan/deceased. He then went on to state that enquiry by them with the appellant was made separately and at that time, he was at the ground floor.

14.2 In cross-examination on behalf of the appellant, PW-15 stood by his deposition. He reiterated that at the ground floor, the appellant had confessed about committing murder in presence of him and others. He also stated that nobody threatened the appellant in his presence and that the confession was made by him voluntarily and he was not pressurized by anyone. Appellant himself suggested to PW-15, to which he replied that, *“it is correct that prior to making confession at ground floor, the accused was being inquired at the first floor.”* Thus, the fact that the confession was made by the appellant at ground floor is not disputed. Appellant’s case is that the confession was made under-pressure, which was denied by PW-15. Factum of PW-15’s presence in the house at that time and that he had made a call at 100 number on the asking of deceased’s *Chacha* is also admitted by the appellant by virtue of suggestions put to PW-15 in cross-examination that when he reached, the dead body was fully covered, which he admitted and further stated that he had removed the cloth to see the dead body and saw marks of mehroon colour over neck and face and swelling over face. It is significant to note that yet another defence was put to PW-15 in cross examination that rent for 5-6 months was outstanding against the appellant and (on that

account), there was quarrel between the appellant and PW-15's *mausi*/PW-17, which he denied.

15.0 PW-14 Mohd. Wakil, father of the deceased deposed that on 24.02.2015, at about 6-6:30 am, he was informed over phone by the appellant that his daughter/deceased had died. He rushed to their rented accommodation. On reaching there, he saw dead body of his daughter was lying on a cot in varanda on the ground floor and the appellant, landlord and neighbours were present. He noticed injury marks on the neck and face of his daughter. Son of the landlord made a call at no. 100 and police arrived after about 15-20 minutes and inspected the body, scene of crime including the room in which the appellant was residing with his family i.e. deceased and two sons. Dead body was sent to hospital. One pink colour *chunni* (Art. 1/PW14) having flowers of different colours was taken into possession by the police vide seizure memo Ex. PW6/D, which he identified in court as that of his daughter. Site plan was prepared. He also stated that during interrogation, the appellant admitted that he had killed his wife. His disclosure statement Ex. PW6/C was recorded.

15.1. As this witness resiled from his previous statement, he was cross examined by the learned Prosecutor. In his said cross examination, PW-14 admitted that when he saw injury marks over the neck and mouth of his daughter, he had asked his son in law, the appellant, about the same. The appellant confessed to killing his daughter by pressing her neck and mouth. He also admitted that thereafter, the landlord and another person called the police at no. 100. He further stated that even after arrival of police, on

interrogation, the appellant had confessed to committing murder of his wife. He stood by his deposition in his cross examination by the appellant and denied that he did not visit the appellant's house on 24.02.2015 and had come to know about the incident from police on 25.02.2015. He stated that the first call was received by him from the appellant about death of his daughter and the second call was received by him from the son of the landlord who also told about death of his daughter but did not tell further facts. He also stated that the signs of injury on the neck of his daughter were reddish in color and her face was also reddish in colour. He further stated that on enquiry by his cousin brother the appellant revealed the above facts. He also reiterated that the landlord had made the call at no. 100 that and he hadn't made that call. He admitted that the appellant admitted his guilt when he was beaten/given one-two slaps by the police officials.

16.0 PW-21 Inspector C.L Meena/Investigating Officer (IO) deposed that on 24.02.2015, on assignment of DD no. 60A (16/A), regarding a call of murder, he proceeded for the spot at about 2:50 pm along with HC Shiv Kumar, Ct Ajay and Ct. Krishan. He reached house no. 1312 gali no. 13/A, Chauhan Bangar at about 3 pm, which was built up to fourth floor. A dead body was lying on a folding cot in the entry room on the ground floor. One Mr. Nafees (who had made a call at no. 100), a relative of the landlord, landlord Mehmood and 10-15 person were found present who informed them about the facts. The appellant was also present in the said room. Meanwhile, HC Sanjeev and Ct. Krishan who were on patrolling duty in the area also reached the spot. On interrogation, the appellant in presence of all the persons present there, confessed to his guilt and stated that he murdered his

wife by pressing her mouth and neck with the help of *chunni* as he doubted her character. Dead body was inspected and a ligature mark on the neck of the deceased was found; there were also some reddish/blue marks on the cheek of the deceased. Crime team was called and reached the spot. The tenanted room in occupation of the appellant on first floor which was in the shape of small kitchen was also got inspected by the crime team which took photograph. Dead body was sent to mortuary of GTB Hospital through Ct. Ajay. *Tehrir* Ex. PW9/B was prepared on DD no. 16A recording the facts which came to his notice on interrogation/inquiry from the persons present and on the basis of confession by the accused and *rukka* was sent through Ct, Shiv Kumar for registration of FIR. Rough site plan Ex. PW21/A was prepared. Meanwhile, HC Shiv Kumar returned to the spot with copy of FIR. He recorded statement of mobile crime team members and that of other witnesses. Appellant was interrogated and arrested vide arrest memo Ex. PW6/A. His personal search was conducted vide search memo Ex. PW6/B. His disclosure statement Ex. PW6/C was recorded. Pursuant to his disclosure statement, the appellant got recovered one stole (*chunni*) (Art. 1/14) having black, green, white colour print of leaves from his rented room. The length of the said *chunni* was about 6 ft. and width was about 21 inches which was sealed and seized vide seizure memo Ex. PW6/D. The appellant was got medically examined. Case property was deposited with malkhana. Post mortem was got conducted and the doctor handed over three exhibits of the deceased with two sample seals which were taken into possession vide memo Ex. PW7/A and were deposited in malkhana. Subsequent opinion of the doctor Ex. PW11/B with respect to *chunni* was obtained. Exhibits were sent to FSL.

16.1 In his cross examination, PW-21 stated that there were three rooms apart from the room/kitchen where the appellant was residing as a tenant; two other tenants were residing on that floor. He clarified that he did not record the statements of those tenants as they had told that they were not aware about the incident. He also stated that he did not remember whether the adjacent room where the deceased and the appellant were residing was lying vacant. He categorically denied that the appellant had informed that he was sleeping in the adjacent room and did not know how his wife died. He also stated that battery rickshaw which was hired for taking the deceased could not be traced despite efforts. He could not remember whether any person Mohd. Sufian was present at the spot. He further stated that none of the witnesses informed him about regular quarrel between the appellant and the deceased. He also stated that he did not ask specific question about delay in giving information to the police and explained that as the witnesses had explained the conduct of the appellant and the reason for informing the police when they came to know about the death of the deceased. PW-31 categorically denied that the appellant had informed him that he was detained in another room or that he was taken out from the closed room. He also denied that the appellant's signatures were taken on blank papers forcibly. He also denied that he did not conduct the investigation fairly.

17.0 It is noteworthy that the facts that the appellant was married to the deceased, daughter of PW-14 Mohd. Wakil; he along with his wife Shahjahan (deceased) and two sons namely Nafis and Nawajis, was residing as a tenant in a kitchen –cum-room situated at first floor of the house of PW-

13 Mohd. Mehboob at Chauhan Bangar, Delhi, since 2-3 months prior to the incident i.e. 24.02.2015, are admitted by the appellant in his statement u/s 313 Cr.P.C. (Q-1, Q-2, Q-3). Same corroborates the version of PW-13 Md. Mehmood and belies the appellant's suggestion to him in cross-examination that he was residing as tenant for last 7-8 months. Though the appellant denied (Q-4) that on 24.02.2015 at about 06:30 p.m. he asked for the key of the main gate from the wife of PW-13 Mehboob. In response to the very next question no. 5, he admitted that PW-17 Smt. Anwari Begum had handed over the key to him and within 2 – 3, minutes thereof, he came back and started calling for PW-17 Anwari Begum and on enquiry, he had told that the deceased was ill and was not able to speak. The appellant also admitted (Q.6) that when PW-17/Smt.Anwari Begum enquired further, he replied that his wife was suffering from dysentery and that he had given some tablets to her. The appellant also stated (Q.7) that e-rickshaw was called by the landlord (PW-13) and that Mohd. Sajid (PW-14) helped him in taking the deceased to e-rickshaw. Appellant further admitted (Q.8) that in e-rickshaw, he sat on one side of his wife/the deceased, while PW-17 Smt. Anwari Begum sat on the other side and PW-13 Mehboob and his son PW-16 Mohd. Sajid followed him on scooter, which corroborates the version of these witnesses.

17.1 It is also significant to note that when it was put to appellant (Q.9) that after reaching at a distance of 200 – 300 meters from the tenanted premises, he stopped the rickshaw and told that he wanted to take the deceased to his sister's house at Mayapuri, the appellant did not deny the same. He only replied that he told them to take the deceased to the house of his sister at Govind Puri. The appellant further admitted (Q.11) that PW-13 Mehboob

requested him to take back the rickshaw to the (rented) house and thereafter, the body of the deceased was made to lie on the cot at ground floor.

17.2. Further, in response to another circumstance being put to him (Q.12), the appellant admitted that PW-17 Smt. Anwari Begum became suspicious and enquired from him as to what had happened but he did not reply ; and she (PW-17) then asked him to call relative of the deceased. He had then informed his father-in-law/PW-14 Mohd. Wakil that Shahjahan had died, whereupon, PW-14 also reached the spot along with other relatives (Q.17). The appellant also admitted that PW-17 then called her *Bhanja* Nafees (PW-15), (who made a call at 100 number) (Q.17). The appellant however denied (Q27) that the *chunni* (seized vide memo Ex. PW-6/D) was recovered at his instance pursuant to his disclosure statement and stated that the police officials themselves lifted the *chunni* from his room along with other clothes. Thus recovery of the *chunni* (Ex. Art. 1/PW14) vide memo Ex.PW6/D from the spot/tenanted room is admitted by the appellant.

17.3 It may also be noted that the appellant (in response to Q.36) also stated that :

"I am innocent and have been falsely implicated in the present case. I was not present on the night of incident i.e. 24.02.2015 at my house and I was working in my factory situated at a distance of 100 meter from my tenanted house. I came back from my factory at about 6.30 am and opened the door and went inside the room and saw that door of the room was lying open and my wife was also lying there. I called my wife but no response, came. Thereupon I called the landlord, who enquired from me and I told that my wife was not well and after giving her medicine, I went to my factory and thereupon e-rickshaw was called and she was taken to hospital. On the way I told my landlord that I was not having sufficient money and I wanted to take my wife to the house of my sister for getting her

*admitted; in hospital. Thereupon, my landlord brought back the e-rickshaw to his house and made a call to my father in law. Prior to that Sajid made arrangements for burial of my wife. Thereafter, **my father in law and all other persons were thinking, whether to call the police or not and at about 3.00 pm they called the police and handed over me to them.** I was beaten by Sajid as well as by the police officials after locking me in a room. **Sajid also threatened me once.***

17.4 From the above it can be seen that the appellant has admitted the factual background that at the request of the appellant the deceased was brought down from rented accommodation at first floor and was being taken to hospital; and how at his insistence, she was brought back from the way. The appellant has admitted that on such insistence, PW-17 had become suspicious. Not only this, he also admitted that he did not reply when PW-17 enquired about the happening. Appellant has also admitted that PW-17 then asked him to call the deceased's relatives and he had called his father-in-law (PW-14). The appellant further admitted recovery of *chunni* (Art.1/PW-14) from his room.

17.5 It is a settled position of law that admission made by an accused in his statement under Section 313 Cr.P.C, can be used for proving his guilt as much as the evidence given by the prosecution witness (*Hate Singh vs. State AIR 1953 SC 468*). Further, a coordinate bench of this court in *Janki Dass vs. State, (1994) 54 DLT 99 (DB)* noted that :

*“12. The weight to be attached to the statement of an accused made under S. 313 of the Code though cannot be placed in a straight jacket since it has to vary according to the circumstances of each case, yet **the legal position seems to be clear that such statements can be taken into consideration in judging not only the innocence but guilt of the accused and***

admission made in a statement under S. 313 of the Code can be made the basis of conviction. ”

17.6 In view of the above, the appellant has admitted all the facts except that he killed his wife. Appellant admittedly did not respond to PW-17, when she asked about the matter.

18.0 In his statement u/s 313 Cr.P.C, the appellant interestingly explained that he insisted for taking the rickshaw to his sister's house as he was not having sufficient money. But no such reason was put to any of the material witnesses, who were accompanying him to the hospital i.e. PW-13 Mohd. Mehboob, PW-16 Mohd. Sajid and PW-17 Anwari Begum. This defence was not even put to the Investigating officer PW-21. Same exposes the falsehood of the appellant.

18.1 It is also noted that to show that he has been falsely implicated, it was suggested to PW-13 Mohd. Mehboob, PW-17 Anwari Begum and PW-16 Mohd. Sajid, in their cross-examination that PW-16 was having illicit relations with the appellant's wife/deceased and that it was PW-16, who had killed the deceased. It was further suggested to them that PW-16 Sajid had threatened the appellant that if he did not take responsibility of murder of his wife (which was denied by all of them), PW-16 would kill his sons. But significantly, no such submission has been made by the appellant in his statement u/s 313 Cr.P.C, when he had an opportunity to explain. He simply stated that he was beaten by Sajid (PW-16) as well as by police officials after locking him in a room and Sajid (PW-16) had also threatened him once. He

did not even specifically state what was the threat extended and when was that. Appellant did not utter a word in his statement u/S. 313 Cr.P.C. that PW-16 was having illicit relations with his wife/deceased.

18.2 Not only this, yet another defence was put to PW-15 Nafis Ahmad in cross-examination that rent of 5-6 months was outstanding against the appellant and there was quarrel between the appellant and PW-15's *mausi* i.e. PW-17 Anwari Begum, so as to suggest his false implication on that account. But this defence was not put to the landlord family i.e. PW-13, PW-16 and PW-17. Furthermore, the appellant has not uttered a word in this respect in his statement u/S. 313 Cr.P.C.

18.3. It is also noted that it was suggested to PW-13 in cross-examination that as he had good relations with the local police, he managed to get the appellant falsely implicated in the present case to save his own son/PW-16 Sajid. But no such averment has been made by the appellant in his statement u/s 313 Cr.P.C.

18.4 From the above it is evident that the appellant took contradictory/false defences. Needless to mention that taking of false defence calls for drawing of adverse inference against the accused and is an additional link in the chain of incriminating circumstances [*Sharad Biridhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622* and *Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 SCC OnLine SC 1396*].

19.0 Further, the appellant took a plea of *alibi*, falsity of which also stands exposed from contradictory stands taken by him in this regard. To PW-13, it was suggested by the appellant in cross-examination that on that fateful night, he was sleeping in the adjacent room and PW-16 Sajid had locked the room from outside (which has been categorically denied by PW-13). Whereas in his statement u/S. 313 Cr.P.C. (Q.36), the appellant has stated that on the night of the incident he was not present at home as he was working in his factory situated nearby and that he had returned from the factory at about 06:30 a.m. Taking of false plea of *alibi* adds up as another incriminating circumstance against the appellant [*Sahabuddin's case (supra)*].

20.0 As per the post mortem report Ex.PW11/A proved by PW-11 Dr. Vishwajeet, the post mortem of the deceased was started at 02:10 p.m. and concluded at 03:30 p.m. on 25.02.2015 and the time since death has been reported to be one and a half day. Thus, the deceased died somewhere around 03:30 a.m. on the intervening night of 23.02.2015 and 24.02.2015.

21.0 It has been established that the appellant was in the tenanted room along with his wife/deceased in the intervening night of 23.02.2015 and 24.02.2015. In terms of Section 106 Indian Evidence Act the onus shifted to the appellant to explain as to what transpired within four walls on that night; and how did the deceased die. The appellant has failed to offer any explanation much less cogent explanation in this respect. The appellant, therefore, has miserably failed to discharge that onus. Same is a strong

circumstance pointing towards the guilt of the appellant. [*Trimukh Maroti Kirkan' case (supra)*].

22.0. Much was argued by the Ld. Counsel for the appellant that delay in reporting the matter to the police has remained unexplained, which also create doubt about the prosecution story. Suffice it to state that it has come in the testimonies of the prosecution witnesses Md. Mehmood (PW-13), Md. Wakil (PW-14), Nafees Ahmad (PW-15), Mohd. Sajid (PW-16) and Smt. Anwari Begum (PW-17) as to how the events turned. PW-13 has even stated that he had asked the deceased's father to wait before reporting the matter to the police. The appellant himself has explained the same in his statement u/s 313 Cr.P.C (Q. 36). Appellant has stated that after arrival of his father-in-law and other persons, they were thinking whether to call the police or not and at about 3.00 pm, they called the police and handed him over to them. From the same, it is apparent that as the appellant has two children aged about 5 years and 3 years and their mother/the deceased was already dead and reporting of the matter to the police would have most likely resulted in the appellant also being sent to the jail, thus leaving small children without any of the parents. Thus, it was not out of place that the relatives took time to report the matter to police.

23.0 Ld. counsel for the appellant also argued that the prosecution has failed to prove any motive on the part of the appellant to kill the deceased. It is noteworthy that the appellant himself suggested to PW-13 Mohd. Mehbood, PW-17 Smt. Anwari Begum and PW-16 Sh. Sajid and even to the IO in their cross-examination that PW-16 Sajid was having illicit relations

with the deceased. Illicit relations of the deceased with PW-16, as alleged by the appellant, was a motive enough for the appellant to commit the crime. In this respect, reference with benefit may be made to the judgment of the Hon'ble Supreme Court in *Balu Sudam Khalde and Another vs. State of Maharashtra, 2023, SCC Online SC 355*.

24.0. It is also the prosecution's case that the appellant made an extra judicial confession. It is seen that PW-16/Mohd. Sajid deposed that on enquiry, the appellant told them that he suspected his wife and therefore, murdered her by using chunni for strangulation. He also stated that the appellant had admitted having murdered his wife/deceased by strangulation even in the presence of the police. The appellant's own suggestion to PW-16 to which, he replied that, "it is wrong to suggest that I threatened the accused to confess his guilt, otherwise, I will kill his children" shows that as per appellant, he had confessed though under threat of PW-16. PW-17 Anwari Begum has also deposed that when they brought the deceased back and enquiry was made with the appellant about the real matter, he did not reply properly. Then her *bhanja* Nafis inquired from him and after great persuasion, the appellant admitted that he had committed murder of his wife/deceased by strangulating her with *chunni*. No suggestion to the contrary was put to PW-17. Moreover, the fact that Nafees (PW-15) had come is not disputed by the appellant in his statement u/s 313 Cr.P.C. (Q14). PW-17 has also stated that Nafees had come first and only thereafter, the police came after about 30-45 minutes. Thus, evidently guilt was admitted by the appellant prior to arrival of police. Same is quite consistent with the evidence which has come on record.

25.0. Even if for a while, extra judicial confession is ignored, in view of the above evidence on record, it has been established beyond reasonable doubt that :

- (i) the appellant and the deceased along with their children were living in the kitchen-cum-room on the first floor of the aforesaid house ;
- (ii) on 24.02.2015 at 06:30 a.m, the appellant asked for keys of the main door to call rickshaw;
- (iii) at the appellant's request, PW-13, PW-16 and PW-17 accompanied him to take the deceased to the hospital in e-rickshaw, but on the way, the appellant suddenly refused to take her to the hospital and insisted upon them to return;
- (iv) the deceased was brought back and she was found to be already dead; she was also found having strangulation mark around her neck; and as per the postmortem report Ex. PW-11/A, she had died at about 03.30 a.m. on the intervening night of 23.02.2015/24.02.2015;
- (v) as per the post mortem report Ex.PW11/A and testimony of PW-11 Dr. Vishwajeet Singh, the appellant died due to *“Asphyxia as a result of Antemortem ligature strangulation. Injury no. 1 is sufficient to cause death in ordinary course of nature”*. Thus, the deceased died homicidal death;

- (vi) vide Subsequent Opinion (Ex.PW11/B), PW-11 has opined that ligature mark present around neck of the deceased, corresponds with the ligature material (*chunni*), which was recovered from the tenanted room of the appellant;
- (vii) the appellant has failed to offer any explanation much less cogent explanation as to what transpired in the intervening night of 23.02.2015 and 24.02.2015 and how did the deceased die;
- (viii) the appellant took false and contradictory defences. He also took false plea of alibi which are additional incriminating circumstances in the chain of circumstances;
- (ix) the appellant suspected that the deceased was having illicit relations with PW-16 Sajid and therefore, had a motive to commit the crime.

26.0 Considering the above facts and circumstances in entirety, the prosecution has been able to successfully establish complete chain of circumstances linking the appellant to the crime. Thus proving beyond reasonable doubt, that the appellant committed murder of his wife. We, therefore, find no illegality in the impugned judgment of conviction and order on sentence.

27.0 Appeal is accordingly dismissed.

28.0 Copy of the judgment be uploaded on the website and be sent to the Superintendent Jail for updation of record and intimation to the appellant.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 22, 2023/gjoshi

