

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

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Reserved on: 7th December, 2022

Decided on: 10th January, 2023

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CRL.A. 233/2019

RAVINDER SOLANKI

..... Appellant

Represented by: Mr. Sumeet Verma, Advocate
(DHCLSC) with Mr. Mahinder Pratap
Singh, Advocate.

versus

STATE

..... Respondent

Represented by: Mr. Laksh Khanna, APP for the State
with SI Devendra Singh,
P.S.Jafrabad.

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CRL.A. 100/2019

SMT. SUMAN

..... Appellant

Represented by: Ms. Anu Narula, Advocate.

versus

STATE

..... Respondent

Represented by: Mr. Laksh Khanna, APP for the State
with SI Devendra Singh,
P.S.Jafrabad.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By these appeals, the appellants are challenging the common impugned judgment dated 29th September, 2018, whereby the appellants Ravinder Solanki and Suman were held guilty for murder of one Shaurya @ Prince (“deceased”) son of Yogendra Solanki; and also the order on sentence dated 1st October, 2018, whereby both the appellants were directed to undergo rigorous imprisonment for life along with a fine of ₹10,000/- each,

in default whereof simple imprisonment for three months for offence punishable under Section 302/34 of the Indian Penal Code, 1860 (IPC).

2. In nutshell, brief facts of the case are that on 19th February, 2013 a PCR call was received at 7.16.34 AM (DD No.7A) that a drunkard had cut head of his son and ran away. ASI Chajju Lal (PW-24) reached the spot and went to the first floor of House No.83, Gali No.7, Ashok Mohalla, Jafrabad where he found blood in the stairs. On the first floor of the said house, dead body of a child was found lying. Rukka was prepared, on the basis of which FIR No.41/2013 dated 19th February, 2013 at PS Jafrabad was registered under Section 302 IPC. Crime team was called at the spot, photographs were also taken and thereafter, the body of the deceased was sent to mortuary for post-mortem.

3. Dr.Neha Gupta (PW-6) of GTB Hospital conducted the post-mortem on the body of the deceased, tendered her report Ex.PW-6/A and opined:

“General Examination:

Dead body of a male child, average built, wrapped in pink and white cotton bed sheet wearing blue upper thermal and blue jeans. Eyes and mouth partially opened. Postmortem staining present at the back and fixed. Rigor-mortis present well developed stage all over the body. Cornea opaque. Greenish discoloration present over right iliac fossa.

External Ante-mortem Injuries:

1. Lacerated looking incised cut throat wound of size 10.7 x 0.2 X 1.5 cms present over front of neck horizontally. In the mid line, wound is 6.5 cms below chin. On the left side wound is 4.5 cms below left angle of mandible and on the right side the wound is 5.5 cms below right angle of mandible. The right end of the wound show staling. The wound extends for 5 cms on right side and 5.7 cms on left side. The wound goes cutting the skin,

subcutaneous tissues, muscles of the neck, left internal jugular vein, trachea through and through and esophagus cut on the left lateral aspect. Extravasation of blood present throughout the wound.

2. *Lacerated looking incised cut throat wound of size 10.3 x 0.2 cms X 0.7 cms present over lower front of neck horizontally, 2.7 cms above supra sternal notch and 0.8 cms below injury No. 1. On right side the wound extends for a distance of 7 cms and on left side the wound extends for a distance of 3.3 cms. The tailing is present on right side which also shows skin tags. The wound goes cutting the skin, sub cutaneous issue and muscles of the neck, no major vessel cut, extravasation of blood present throughout the wound.*

3. *Reddish scratch abrasion 3x0.1 cms present over left side chest, horizontally present, medial end present just over mid line and 6 cms below supra sternal notch.*

4. *Superficial incised wound 1.8 x 0.2 x 0.1 cms present obliquely over left side chest with lower medial end 2.5 cms from mid line and 8 cms below clavicle with under lying extravasation of blood in inter costal muscles.*

5. *Superficial incised wound 1x0.2 x 0.1 cms present over left side chest vertically, 4.8 cms from mid line and 8.5 cms below clavicle with underlying extravasation of blood in inter costal muscles.*

6. *Superficial incised wound 0.5 x 0.2 x 0.1 cms present obliquely on left side chest 5.5 cms from mid line and 10.5 cms below clavicle.*

Internal Examination:

Scalp and skull NAD.

Brain: 1372 gms, pale.

Neck: As mentioned in injury No. 1 & 2.

Ribcage: NAD.

Lungs: Right is 138 grams, left is 113 gms, both pale,

Heart: 87 gms NAD

Stomach: contains about 100 ml of reddish fluid.

Intestines: distended due to gases and fluid.

Liver: 578 gms pale

Spleen: 58 gms pale

Kidneys: Right is 37 gms, left is 35 gms, both pale.

Urinary bladder empty, walls NAD

Pelvis and Vertebra NAD

Opinion:

Time since death is about one day.

Cause of death is hemorrhagic shock as a result of ante mortem injury to neck and associated blood vessels produced by sharp edged weapon. Injury No. 1 is sufficient to cause death in ordinary course of nature.”

4. Thereafter, on 26th February, 2013 notice under Section 160 of Code of Criminal Procedure (Cr.P.C.) was served on appellant Ravinder and upon his revelation, he was arrested vide arrest memo Ex.PW-22/A and his disclosure statement (Ex.PW-22/C) was recorded. On 25th April, 2013, appellant Suman was produced at the Police Station by her mother as she was in the advanced stage of her pregnancy and upon her revelation, she was also arrested vide arrest memo Ex.PW-13/A and her disclosure statement (Ex.PW-23/L) was recorded.

5. Upon completion of investigation, charge-sheet was filed and the appellants were charged for murder of the deceased punishable under Section 302 IPC. For establishing its case, the prosecution had examined 24 witnesses. To rebut the case of the prosecution, defence also led evidence in form of six defence witnesses.

6. The appellants assail the impugned judgment on the ground that the chain of circumstances unerringly pointing towards the guilt of the accused was not complete and that none of the tests of circumstantial evidence was established by the prosecution. Reliance was placed on the decisions of the Hon'ble Supreme Court in 1989 Supp. (2) SCC 706 Padala Veera Reddy vs.

State of A.P. and 2022 (8) SCC 536 Ravi Sharma vs. State (Govt. of NCT of Delhi). It was contended that the main incriminating circumstance against the appellants was that the dead body was found lying on the first floor opposite to the washroom leading to the staircase. As per the rukka (Ex.PW-24/A), ASI Chajju Lal neither found the father of the deceased Yogendra Solanki at the spot nor any other eye-witness. It was contended that the alleged weapon of offence i.e. knife was recovered at the instance of the appellant Ravinder pursuant to the disclosure statement (Ex.PW-22/C), however, the said disclosure statement was not signed by the appellant, and thus, the said disclosure statement was not voluntarily made by the appellant. Further, the said recovery of the knife was effected on 26th February, 2013 i.e. eight days after the incident. It was further contended that the said recovery was effected from a drain outside the common house of the appellant and Yogendra Solanki from an open and visible place, and therefore, the same cannot be treated as a fact exclusively within the knowledge of the accused as required under Section 27 of the Indian Evidence Act, 1872. It was further the case of the appellant that there are glaring inconsistencies between the testimonies of Yogendra Solanki (PW-7) and SI Gaurav Chaudhary (PW-22) who were the witnesses to the recovery of the knife. As per PW-7, the knife was recovered from the left side of the drain, however, PW-22 stated that the knife was recovered from the right side of the drain. It was further contended that the said knife was not connected to the alleged offence as neither blood which was detected on the knife matched with the ABO grouping of the deceased nor was the opinion of doctor conducting post-mortem (PW-6) conclusive with respect to the use of knife in commission of the offence. Even otherwise, it is not

clear if any subsequent opinion regarding the weapon of offence was in fact sought by the IO, as such subsequent opinion does not find mention in the charge-sheet, and the same was taken only during the stage when the testimony of the witness was recorded. It was further contended on behalf of the appellant that the sketch of the knife (Ex.PW-7/A) was dated 27th January, 2013 whereas, as per the seizure memo (Ex.PW-7/B), the knife was recovered on 27th February, 2013, and therefore, it was unknown how was the sketch of the knife prepared even before it was recovered. It was further contended that one green plastic handle knife was found by the crime team mentioned at Sr.No.4 of Ex.PW-21/B was neither seized nor any sketch of the same was prepared. This knife was not seized and left at the spot. As regards the motive, the IO Insp. Dheeraj (PW-23) deposed that the motive of the alleged offence was a property dispute, however, the same was neither substantiated nor proved by the prosecution. Even otherwise, the property was in the name of the wife of PW-3. Further it was the appellant Ravinder, who made a call to the police at 100 no. and called the neighbors. Another instance alleged against the appellant Suman was that PW-4 saw blood stain on the face of the co-accused Suman near the nose-pin, however, the same cannot be held to be sufficient to convict the appellant Suman. Even otherwise, despite being an immediate neighbour PW-4's statement was recorded two days after the incident. PW-4 is not a signatory to any memo prepared by the police and therefore, her presence at the spot is doubtful. It was further contended that the father of the deceased Yogendra was so drunk on the day of the incident that the body of the deceased was also identified by the relatives and the statement of the father was recorded only on 27th February, 2013 (Ex.PW-7/DB).

7. It is further contended by learned counsel for the appellants that the defence led by the appellants was that baby Khushi @ Khyati Solanki (DW-6) daughter of the appellants, was the most important *res gestae* witness as she deposed to have seen Yogendra Solanki (PW-7) dragging deceased and leaving him in front of the bathroom at first floor. However, the same was not considered by the trial court in the impugned judgment. Further the photographs of the ground floor Ex.PW-7/DC to PW-7/DE show presence of blood at the ground floor. Furthermore as per the testimony of Nirmala (PW-4), the slope of the floor where the blood was lying was towards the *nali* situated outside the room, however, it is contended that if the slope was towards the *nali* then the blood could not have flown towards the staircase. It was contended that the blood was found on the staircase because of dragging the body from ground floor to the first floor. Dragging marks are visible in the photographs exhibited as Ex. PW-12/20, PW-12/21 and PW-12/28. Reliance was placed on the decisions cited as AIR 1963 SC 1113 Prabhoo vs. State of U.P. and 2012 (1) JCC 540 Deepak Chaddha vs. State.

8. Learned APP for the State submitted that the case of the prosecution has been established beyond doubt and therefore, the impugned judgment be upheld and the present appeals be dismissed. Learned APP for the State contended:

- i. The offence took place on 19th February, 2013, appellant Ravinder was arrested on 26th February, 2013 and the knife was recovered on the very next day i.e. 27th February, 2013 of his arrest and therefore, there was no delay in recovery of the said knife. Further mentioning of the date as 27th January, 2013 on the sketch of knife Ex.PW-7/A appears to be a typographical error and the same cannot dent the case

of the prosecution as by 27th January, 2013 the offence of murder of the child Shaurya had not taken place.

- ii. The contradiction brought out between the testimony of Yogendra (PW-7) and SI Gaurav (PW-22) was that while PW-7 stated that the knife was recovered from the left side of the drain, PW-22 stated that the knife was recovered from the right side of the drain. It was contended that this discrepancy is minor in nature and can occur with the passage of time.
- iii. Though blood was not detected on the knife recovered but blood was found on other articles seized from the scene of the crime and reliance was placed on the decision reported as 2012 (8) SCALE 670 Sunil Clifford Daniel vs. State of Punjab to contend that in cases where blood group could not be ascertained from the articles recovered in the FSL and serological reports, benefit need not necessarily go to the accused.
- iv. The knife which was mentioned in the crime scene report Ex.PW-21/A was not seized by the IO as there were no blood stains on the said knife.
- v. Yogendra (PW-7) in his testimony had categorically stated that the appellants were having an evil eye on the property of PW-7 and by implicating PW-7 for murder of the deceased, the appellants would be able to acquire his property. Reliance was placed on the decision reported as 2012 (7) SCC 699 Kashinath Mondal vs. State of West Bengal.

- vi. Recording of statement of Nirmala (PW-4) after two days of the incident i.e. on 21st February, 2013 Ex.PW-4/DA is not an inordinate delay to not rely upon her statement.
 - vii. As per the testimony of Manisha Upadhayay (PW-10) no blood was found on the ground floor. Further the crime scene report Ex.PW-10/A also does not mention that any blood was found on the ground floor. Further the perusal of the photograph relied upon by the appellant establishes that the blood was flowing from the first floor where the dead body was found, onto the stairs and the same cannot be termed as drag marks. From the photographs it is not evident that the crime was committed on the ground floor and thereafter the body was dragged to the first floor.
 - viii. The defence witness Daharmbir Singh (DW-5) is not a reliable witness because as per his statement he had seen Yogendra (PW-7) on the date of the incident at about 8.30 AM near the *ganda nala* Gokulpuri with blood stains over his hands however, PW-1, PW-4, PW-23 and PW-24 clearly stated that Yogendra (PW-7) was present at the ground floor at the said time.
 - ix. Testimony of DW-6 was not dealt by the trial court as on the date of her evidence i.e. 18th August, 2017 she stated that she did not understand the concept of oath and her statement was recorded without oath.
9. Having heard learned counsels for the parties and perusing the record, the evidences as noted hereinafter emerge on record.
10. Yogendra Solanki (PW-7) deposed that the appellant Ravinder was his brother who was residing with his wife/appellant Suman and his

daughter Khushi on the first floor of House No.D-83, Ashok Mohalla, Maujpur. On 24th January, 2013 his wife had gone to her matrimonial house as she was pregnant. He stated that in the year 2007 appellant Ravinder had taken a loan of ₹1.2 lakhs from him and despite his repeated requests appellant Ravinder failed to return the amount. Appellant had also withdrawn ₹32,400/- from the account of their father with SBI bank, and he was supposed to get half share of the same which Ravinder never paid. He also stated that the appellant thought that he was a drunkard and by killing his son, the appellants would get all the property and accordingly they made the plan to implicate him in killing his own son. On 19th February, 2013 he along with appellants Ravinder and Suman and the deceased were present inside the house and the main door was bolted from inside. In the morning, he was woken up by the police. He informed the police that his son used to go to the first floor to get ready for his school on which he was informed by the police that his son was lying dead at the first floor in front of the room of the appellants. In his cross-examination, he stated that he was sleeping on the cot while his son/deceased was sleeping on the bed in the same room. He denied having knowledge if any knife was kept in his room as shown in photograph (Ex.PW-7/D3).

11. Nirmala Devi (PW-4) stated that appellant Ravinder used to live on the first floor while Yogendra used to live on the ground floor. On 19th February, 2013 at about 7.00 AM appellant Ravinder called her husband and upon inquiry appellant Ravinder told her that Yogendra had run away after killing his son/deceased. She went to the house of the appellant with her husband but found the door bolted from inside. Appellant Ravinder opened the door, they went inside and found son of Yogendra lying dead in front of

the staircase outside the door of the bathroom. Appellant Suman was also present there wearing a gown and having bloodstains on her face near nose pin and on questioning Suman about the same, Suman went to the bathroom, came out wearing a suit and cleaning blood from her face. In her cross-examination, she stated that police did not recover anything from the ground floor of the house in her presence and that only Yogendra was present there in a drunken condition. In cross-examination on being questioned qua the slope of the floor, she stated that the slope of the floor where the blood was lying was towards the *nali* situated outside the room.

12. IO Inspector Dheeraj (PW-23) stated that on 19th February, 2013 when he reached the spot ASI Chajju Lal along with other staff was already present. He noticed a dead body of a boy lying in the room of first floor in a pool of blood with cut marks on the face and neck of the body of the boy. He lifted exhibits from the body of the boy and thereafter the body was sent for post-mortem. Thereafter, he prepared the site plan (Ex.PW-23/E) and recorded the statement of PWs. On 26th February, 2013 notice under Section 160 Cr.P.C. was served upon appellant Ravinder to join investigation, wherein appellant Ravinder revealed about the murder of deceased after which he was arrested and his disclosure statement was thereafter recorded. At the instance of the appellant Ravinder one knife was recovered from the drainage situated near the main gate of the house, sketch of the knife was prepared and it was seized. On 12th March, 2013 the exhibits were sent to FSL. On 25th April, 2013, appellant Suman was produced in the police station, she was arrested and her disclosure statement was recorded. In his cross-examination he stated that one knife with green plastic handle mentioned at Sr.No.4 of Ex.PW-21/B was not seized, no sketch of this knife

was prepared and the same was left at the spot. On being asked he further stated that motive of the offence was property dispute and he did not collect the electricity, water or house tax bill from Yogendra regarding the house.

13. ASI Chajju Lal (PW-24) deposed that he was on emergency duty on the day of incident when he received DD No.7A (Ex.PW-11/A) at about 7.30 AM wherein it was recorded that a drunkard had cut head of his son. Thereafter he along with Constable Suraj (PW-9) went to the spot at House No.D-83, Gali No.7, Ashok Mohalla, Maujpur. At the spot, PCR van was present and he went inside the house. He found blood on the stairs and on the first floor of the house dead body of the deceased was found lying smeared with blood. He prepared the rukka (Ex.PW-24/A) and got the FIR registered. Investigation was handed over to IO Inspector Dheeraj (PW-23). He further stated that on the ground floor, the father of the deceased was found lying sleeping. In his cross-examination, he stated to have seen few stains of blood on the ground floor which fell from the first floor through stairs. He further stated that he had not mentioned about the presence of Yogendra and accused person in the rukka.

14. SI U.Balashankaram (PW-21) was the in-charge of the crime team who prepared the crime team report Ex.PW-21/A. In his cross-examination he stated that he had suggested to the IO to collect the exhibits as mentioned in document Ex.PW-21/B from the spot. He further stated to have found the *kunda* with screw lying in the inside of the room of the ground floor and one knife was found beneath the mattresses of the bed on which the father of the deceased was sleeping.

15. SI Gaurav Chaudhary (PW-22) deposed that on 26th February, 2013 he had joined the investigation with IO Dheeraj Singh. He correctly

identified the accused Ravinder in Court and further stated that on 27th February, 2013, he reached H.No. D-83, Ashok Mohalla where, at the instance of the accused Ravinder, he took out one kitchen knife from the *nali* on the right side after entering the main gate and the same was seized by the IO (Ex.PW-7/B). In his cross-examination, he stated that the drain from where the knife was recovered was dried and it was an open *nali* which was situated outside the house in the *gali*.

16. Gayatri (PW-1) stated that she was a distant relative of Ravinder and Yogendra. She was declared hostile and in her cross-examination she stated that appellant Suman told her that Yogendra ran away after killing the deceased however, she found Yogendra sleeping on the ground floor.

17. Pratap Singh (PW-3) stated that he was the step brother of Yogendra and Ravinder. He identified the body of the deceased (Ex.PW-3/A) and after the post-mortem the body was handed over to him.

18. Pramod Kumar (PW-5) stated that he used to supply milk at the appellant's house but on the date of incident appellant Ravinder Solanki opened the door and informed him that milk was not required on that day.

19. Ms.Manisha Upadhyay (PW-10) Sr.FSL Officer conducted the FSL examination and prepared her report Ex.PW-10/B and serological report Ex.PW-10/C. As per these reports blood was detected on the weapon of the offence however, blood grouping could not be generated. In her cross-examination she stated that she did not find any blood at the ground floor of the house. She also stated that as she had lifted exhibits from the crime scene in the presence of the IO and she did not seal the exhibits with her own seal.

20. In his statement under Section 313 CrPC, appellant Ravinder Solanki admitted to be staying with his wife and daughter Khushi on the first floor and his brother Yogendra Solanki with his wife and son Shaurya @ Prince (deceased) to be residing on the ground floor of house No.D-83, Gali No.7, Ashok Mohalla, Maujpur, Delhi since birth. He further admitted to have made a call to the PCR on 19th February, 2013. He stated that there was no dispute in the family. He further admitted to have made a call to his step brother Pratap Singh (PW-3) on the date of incident about the murder of deceased Shaurya. He further stated that he did not open the door rather the door was already lying open where the dead body was found. He further stated that he did not refuse to take the milk rather the neighbors refused PW-5 to supply the milk on the day of incident. He further stated that Yogendra was not present at the house when ASI Chajju Lal came to the house. Yogendra's phone was found lying in his room. He denied that knife was recovered at his instance. He further stated that he was innocent and had been falsely implicated in the present case. He further stated that Yogendra used to beat his wife and he used to save her and therefore, Yogendra held a grudge against him. He stated to have made a police complaint against Yogendra and he was taken to the police station.

21. Appellant Suman in her statement under Section 313 Cr.P.C. stated that she lived with her husband and daughter on the first floor while Yogendra and his family were residing on the ground floor. She stated that when police came Yogendra had already run away from the house. She stated that one knife was found lying on the bed of Yogendra and the same was stained with blood. It was lifted by the police but she was unaware whether the same was seized or not. She further stated that she did not make

any disclosure statement. She stated that she was innocent and was falsely implicated in the present case since her daughter had seen Yogendra seen dragging the deceased to the gate of first floor so Yogendra falsely implicated her and her husband with the connivance of the police.

22. Main contentions of learned counsel for the appellant Ravinder challenging the recovery of knife are that the so-called disclosure statement by Ravinder Solanki was not voluntary as the same was not signed by him and the alleged recovery of knife was effected on 26th February, 2013 i.e. 8 days after the incident. Further, the said recovery was from a drain outside the common house of the appellant and Yogender Solanki which is an open and visible place and thus cannot be treated to be exclusively within the knowledge of the appellant Ravinder Solanki.

23. Even if the disclosure statement of the appellant has not been signed, from the testimony of the witnesses it is evident that the recovery of the knife was made on the pointing out of Ravinder Solanki, as deposed to by Insp. Dheeraj, the investigating officer (PW-23). A notice under Section 160 Cr.P.C. was given to the appellant Ravinder on 26th February, 2013 to join the investigation and after his disclosure was recorded, he was arrested vide arrest memo Ex.PW-26/A and on 27th February, 2013 they reached the house where the murder of Shaurya was committed and the appellant took out one knife from drainage situated near the main gate of the house, vide the seizure memo Ex.PW-7/B which was duly witnessed by the father of the deceased/ Yogender Solanki and SI Gaurav Chaudhary. The recovery is duly supported by the evidence of PW-7 except to the extent that the same was from the left side of the drainage or the right side which would depend on the side where the person would be standing and cannot be treated as a

material contradiction. Further the knife was found concealed in the drain and not from an open area. Further the disclosure having been made on the 26th February, 2013 and the recovery having been made on the 27th February, 2013, there is no delay in recovery of the weapon of offence.

24. Learned counsel for the appellant has strenuously contended that the learned Trial Court failed to consider the res-gestae evidence of baby Khushi (DW-6) who stated that she saw Yogender Solanki (PW-7) dragging deceased Shaurya and leaving him in front of the bathroom at the first floor. Baby Khushi deposed that the date she did not know and it was winter season when she got up to attend nature's call, she woke up her mother who told her to go to the bathroom. She saw her uncle Yogender, father of Shaurya, dragging Shaurya and leaving him in front of the gate of bathroom. Due to fear she went inside the room and told her mother about the manner in which her uncle dragged Shaurya. However, as noted above, no blood was found on the ground floor and blood had collected on the first floor and was dripping down to 2 – 3 steps below the first floor. Further, number of witnesses have found that Yogender was sleeping in drunken condition even when the house was full of Police officers and the neighbours. This version of baby Khushi cannot be accepted. Learned counsel for the appellant has stated that dragging marks were visible in photographs Ex.PW-12/21, PW-12/20 and PW-12/28 at pages 431, 447 and 445 of the TCR, however this Court has perused the same and is not in conformity with the contention of learned counsel for the appellant.

25. Learned counsel for the appellant has also highlighted that when the crime scene report was prepared, one knife was found below the bedding of Yogender Solanki and as per the crime scene report, the same was asked to

be recovered by the investigating officer. Undoubtedly, in the photograph one knife is found below the bedding of (PW-7)/ father of the deceased, however since the same had no stains whatsoever and was lying below the bed in a usual manner, the same was not recovered. The fact that the knife recovered at the instance of the appellant Ravinder was used in the commission of offence is fortified by the report of the FSL as also the opinion of the post-mortem Doctor (PW-6) that the fatal injury No. 1 and 2 to the deceased Shaurya was possible by the knife recovered or any similar kind of knife. The contradiction sought to be pointed out that Insp. Dheeraj who stated that they searched the knife on the pointing out of the appellant, whereas SI Gaurav stated that the appellant took out the knife from the Nali, are not material contradictions. Undoubtedly, the alleged incident took place on 19th February, 2013, thus the date of 27th January, 2013 mentioned on Ex.PW-7/A is only an error in the writing; and the seizure memo Ex.PW-17/B notes the correct date i.e. 27th February, 2013.

26. Hon'ble Supreme Court in the decision reported as (1992) 3 SCC 43 Mulak Raj & Ors. Vs. Satish Kumar & Ors. succinctly laid down the legal position in regard to the appreciation of circumstantial evidence and held:

“4. Undoubtedly this case hinges upon circumstantial evidence. It is trite to reiterate that in a case founded on circumstantial evidence, the prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime. If any other reasonable hypothesis of the innocence of the accused can be inferred from the proved circumstances, the accused would be entitled to the benefit. What is required is not the quantitative but qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime. If the conduct of the accused in relation to the

crime comes into question the previous and subsequent conduct are also relevant facts. Therefore, the absence of ordinary course of conduct of the accused and human probabilities of the case also would be relevant. The court must weigh the evidence of the cumulative effect of the circumstances and if it reaches the conclusion that the accused committed the crime, the charge must be held proved and the conviction and sentence would follow.”

27. From the evidence of the prosecution it is well established that in the house on the fateful day i.e. 19th February, 2013 there were only 5 persons Yogender Solanki and his minor son Shaurya who used to reside on the ground floor and Ravinder Solanki, Suman and their daughter Khushi who used to reside on the first floor; as deposed to by Smt. Gayatri Devi PW-1. Witnesses have stated that the wife of Yogender had gone to her parent's house. Further PW-1 stated that Shaurya used to go upstairs for getting ready in the morning. The dead body of Shuarya being slit with the fatal stab injuries on the neck was found on the first floor where Ravinder Solanki and Suman resided with their daughter Khushi outside the bathroom and blood was percolating down the stairs, as deposed to by Smt. Nirmala Devi (PW-4). ASI Chhajju Lal (PW-24) stated that when the neighbours as also the Police reached even after the dead body of Shaurya was recovered, PW-7 was found sleeping in the room on the ground floor and at 2 O'clock when he was taken to the Police Station he was still in drowsy condition. Even as per the testimony of U. Balashankaram the in-charge, Mobile Crime Team, when he left spot at about 9.30 – 9.45 AM Yogender (PW-7) was still drowsy. Further, from the evidence of SI U. Balashankaram (PW-21) in-charge, Mobile Crime Team and ASI Chhajju Lal (PW-24) a kunda with the

screw was lying inside the room of the ground floor, thereby indicating that the room where Yogender was sleeping was pushed open.

28. On 19th February, 2013 besides the Mobile Crime Team a visit was also made by the Senior Scientific Officer (Biology), FSL Division along with one photographer and they detected blood which was of human origin on the stairs and wall near the first floor room and in the water drain area in the first floor room. Two blood gauges were prepared from the spot. In cross-examination this witness clarified that she did not find any blood spot on the ground floor of the house, thereby belying the version of the appellants that the murder was committed by Yogender on the ground floor and thereafter the body was dragged to the first floor to falsely implicate them.

29. The conduct of appellant Ravinder Solanki is also relevant as he did not take the milk on 19th February, 2013 as deposed to by Pramod Kumar (PW-5) who stated that at about 7.00 – 7.10 AM when he went to supply the milk, Ravinder opened the door and informed him that he did not require the milk that day and therefore he left.

30. From the statements of Nirmala Devi (PW-4) who was the neighbourer it is evident that Ravinder called her husband by name while standing near the grill of balcony of the first floor of his house on 19th February, 2013 at about 7.00 AM and when she came out Ravinder informed her that ‘Yogender has run away after killing his son Shaurya’; she informed her husband and then both of them went to the house of the accused but the door was bolted from inside. Ravinder opened the door and then they went inside. The plea taken by Ravinder as is evident from PCR call made and as told to the neighbours immediately that Yogender killed his

son Shaurya and then ran away is falsified from the fact that Yogender had not run away anywhere and was sleeping on the ground floor and even when the Police and lot of people had entered the house, he continued sleeping and around 9.45 AM also he was in a drowsy condition. Thus, Yogender had not run away and further if he had ran away the door could not have been bolted from inside because PW-4 categorically stated that when they reached the house with the neighbourers Ravinder opened the door which was bolted from inside. Statement of Nirmala Devi (PW-4) is further relevant to show that when she was speaking to Suman, the appellant who was wearing a gown, she had blood stains on the face near nose pin and on the witness questioning her about the blood, Suman went inside the bathroom and later came out wearing a suit and after cleaning the blood from her face.

31. As regards the proof of motive, Yogender deposed that one and a half month prior to the incident appellant Suman who was pregnant came to her at around 12 noon and asked whether she would deliver a male or female baby, to which he stated that a female child would be delivered, on hearing which she started weeping and went towards the first floor of the house. She called him after 4-5 minutes and asked him as to why he had used such words; he felt sorry, on which Suman remarked “*tum apne ladke ka jyada ghamand karte ho kya*”.

32. Learned counsel for the appellant Ravinder has contended that the motive has not been proved for the reason different versions of motive are coming; though Yogender stated that it was because of the remark he made that Suman would deliver a baby girl but the investigating officer Insp. Dheeraj stated that the dispute was in relation to the property. The dispute

in relation to the property was sought to be elicited in the cross-examination of Insp. Dheeraj, however he cannot be a witness to this fact and no suggestions were given to Yogender in his cross-examination that there was a dispute of the property between the parties. Hence the so-called motive sought to be elicited from the investigating officer who is not a relevant witness for that purpose cannot belie the version of Yogender Solanki.

33. In view of the fact that the dead body of Shaurya was found on the first floor of the house where Ravinder Solanki and Suman were residing with their minor daughter Khushi and the plea taken by Ravinder that Yogender committed murder of his son and ran away stood totally falsified; the onus shifts on him and there being no probable explanation other than the appellants having committed the alleged offence, which onus they failed to discharge under Section 106 of the Indian Evidence Act, this Court finds no error in the impugned judgment of conviction and order on sentence.

34. Supreme Court in the decision reported as (2006) 10 SCC 681 Trimukh Maroti Kirkan Vs. State of Maharashtra explicated that if an offence takes place inside the privacy of home where the accused had all the opportunities to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of accused, if strict principles of circumstantial evidence are insisted upon. Supreme Court held:

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

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

21. *In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of T.N. v. Rajendran [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] (SCC para 6); State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] (SCC para 39 : AIR para 40); State of Maharashtra v. Suresh [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] (SCC para 27); Ganesh Lal v. State of Rajasthan [(2002) 1 SCC 731 : 2002 SCC (Cri) 247] (SCC para 15) and Gulab Chand v. State of M.P. [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] (SCC para 4).]*

22. *.....In Ganeshlal v. State of Maharashtra [(1992) 3 SCC 106 : 1993 SCC (Cri) 435] the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. ”*

35. Appeals are accordingly dismissed.
36. 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.

(MUKTA GUPTA)
JUDGE

(POONAM A.BAMBA)
JUDGE

JANUARY 10, 2023
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