

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Uday Kumar

C.R.A. 98 of 2017

**Sahidul Rahaman @ Sahidul Islam @ Sahidul
-Vs-
The State of West Bengal & Anr.**

For the Appellant : Mr. Ayan Basu
: Mr. Amit Roy
: Mr. Sumit Routh

For the State : Mr. Debasish Roy, Ld. P.P.
: Ms. Amita Gaur

Hearing concluded on : 25th September, 2024

Judgment on : 08th October 2024

Uday Kumar, J: -

1. Appellant Sahidul Rahaman has challenged the judgment of conviction dated 05.01.2017 and order of sentence dated 06.01.2017 passed by Learned Additional Sessions Judge, FTC – II, Islampur, Uttar Dinajpur in Sessions Case No. 137 of 2014, Sessions Trial No. 07 of 2015 arising out of G.R. Case No. 68 of 2012, in connection with Chopra Police Station Case No. 07 of 2012 dated 8th January, 2012 under Sections 498A/302/34 of Indian Penal Code, 1860 convicting the appellant and sentencing him to suffer life imprisonment and to pay a fine of Rs.

50,000/- (Rupees Fifty Thousand only) as fine, in default, to suffer additional rigorous imprisonment for two years six months for non-payment of Rs. 50,000/- (Rupees Fifty Thousand only) in respect of offence punishable under Section 302 of Indian Penal Code, 1860 and to suffer a term of three years simple imprisonment and to pay a fine of Rs 10,000/- (Rupees Ten Thousand Only), in default to suffer simple imprisonment of six months for the offence punishable under Section 498A of the Indian Penal Code, 1860, while other accused persons namely Ansarul, Sapila Khatun and Sapit Md. have been acquitted from the charges under Section 498A/ 302/ 34 of Indian Penal Code, 1860.

2. Briefly stated, despite Nikah of complainant's daughter Renuka Begam @ Khatun was held with appellant Sahidul Rahaman son of Sapit Mohamad on 21st February 2011, she was living at her parent's house. On 26th December 2011 their marriage was solemnized as per sharia. Thereafter custom of Rukshudi (bidai) was observed. Since then, both started to live together as husband and wife at her matrimonial home. Unfortunately, she met to her unnatural death at her matrimonial home in the morning of 08.01.2012. Her father saw her dead body was lying on the bed at the veranda of her room. On his written complaint lodged to Officer-in-charge of Chopra Police Station, a case being No. 07 of 2012 dated 08.01.2012 under Sections 302/498A of Indian Penal Code, 1860 was started against Sahidul Rahaman @ Sahidul Islam @ Sahidul, Ansarul, Sapila Khatun, Selina Khatun and Sapit Md of School Para, Daspara, Police Station Chopra, District Uttar Dinajpur. Investigating Officer visited place of occurrence, prepared suratehal report of deceased, arranged an

Executive Magistrate for inquest over dead body, sent dead body to hospital for post-mortem, seized articles under proper seizure list, recorded statement of witnesses and submitted charge sheet, under Section 302/498A/34 of Indian Penal Code, 1860 against Sahidul Rahaman @ Sahidul Islam @ Sahidul, Ansarul, Selina Khatoon, Sapit Md. and Sapila Khatoon, upon which Learned Additional Chief Judicial Magistrate, Islampur, taken cognizance of the offences and he committed this case to the Court of Learned Sessions Judge after complying the requirements of Section 207 of Code of Criminal Procedure 1973, who transferred it to the Court of Learned Additional District and Sessions Judge, 2nd Fast Track Court, Islampur, Uttar Dinajpur, for trial and disposal of Sessions Case No. 137/14. Subsequent to framing of charge under Sections 498A /302/34 of Indian Penal Code, 1860 against the accused persons, trial of Sessions Trial Case No. 07 of 2015 was commenced. During trial as many as 12 prosecution witnesses were examined, 9 documents were produced and one article was marked as material exhibit. Thereafter statement of accused persons were recorded under Section 313 of the Code of Criminal Procedure, 1973 wherein appellant claimed to adduce evidence in his defence.

3. Based on above evidences, Learned Trial Judge has passed the impugned order.
4. Mr. Ayan Basu, learned counsel appearing for the appellant has submitted that:
 - i. Deceased never stated anything to her parents about strenuous relationship with appellant ever she had. Evidence of

prosecution Witness Number 1, 5, 9 and 10 are not reliable and trustworthy as they are either interested witnesses or hostile witness or official witness.

- ii. None witnessed the incident. The prosecution case is entirely based on the circumstantial evidence but the guidelines necessary to prove a case based on circumstantial evidence has not been followed by the Learned Trial Judge, while passing the impugned order.
- iii. He further submitted that prosecution failed to
 - a. establish the chain of circumstances in a manner that no other hypothesis can be derived except the guilt of accused,
 - b. prove motive of appellant behind murder of his wife within 13 days of marriage despite the fact that motive is necessary in a case based on circumstantial evidence and
 - c. satisfy the theory of last seen together by proving that appellant was the person who last seen together with deceased, immediately before her death.

5. Learned Counsel highlighted the lacunae

- i. left by autopsy surgeon in the post-mortem report to mention the nature of injuries are homicidal or not.
- ii. of PW7, the autopsy surgeon, who admitted in his cross-examination that *“he did not find any finger marks on the deceased's neck”* and

iii. of prosecution who did not collect and send the nail scratches to forensic laboratory for its DNA testing. These lacunae are material in nature.

6. Learned Counsel further stated that Learned Trial Court held the appellant guilty merely on the ground that appellant failed to discharge his burden of proving facts which were especially within his knowledge as per Section 106 of the Evidence Act, 1872. Learned Court failed to appreciate that Section 106 of the Indian Evidence Act, 1872 comes into play only when the guilt of the accused is established beyond reasonable doubt.
7. In support of his contention, he relied on the ratio of the decision in *Nagendra Saha vs State of Bihar* reported in (2022) 1 SCC (Cri) 127, in *Vikramjit Singh v. State of Punjab* reported in (2006) 12 SCC 306, in *Joydeb Patra v. State of W.B.*, reported in (2014) 12 SCC 444, in *Sunil Kundu v. State of Jharkhand*, (2013) 4 SCC 422, in *Anand Ramachandra Chougule v. Sidarai Laxman Chougala*, reported in (2019) 8 SCC 50, in *Raja Naykar v. State of Chhattisgarh* reported in (2024) 3 SCC 481 and in *Parubai v. State of Maharashtra* reported in (2021) 18 SCC 353, *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116.
8. On the contrary, Mr. Debasish Roy, Learned Public Prosecutor, for the State-respondent submitted that:
 - i. Learned Trial Judge has rightly passed the order of conviction against the appellant as the link of chain of circumstances of the incidents is well established in this case.

- ii. Theory of last seen together is fully satisfied. Presumably the accused should stay with his spouse in night. In such circumstances, the presumption that none except the appellant was last resided with deceased, is proper and correct.
 - iii. There is nothing on record to show that deceased was ever suffering from any medical complication or she had enmity with any person or any other person had intruded into her room.
 - iv. Her unnatural death happened at her matrimonial home within 13 days of her Rukshudi under mysterious circumstances itself attract suspicious circumstances against the appellant. The suspicious behaviour of appellant also appears from his conduct after seeing the dead body of his wife.
 - v. Learned P.P. further submitted that as per settled principle of law motive is not required to establish in case of murder as intention of a man can be formed even at the place of incident or at the time of commission of crime.
 - vi. Deceased was under mental pressure as appellant abandoned her even after Nikah.
9. In support of his contention, he relied on the ratio of the decision in *Sanjeev Vs. State of Haryana, reported in (2015) 4 SCC 387*.
10. We have given careful consideration to the submissions. The prosecution is based on circumstantial evidence. The Learned Sessions Judge has set out the facts of marriage of deceased with appellant and tortures were inflicted on her at her matrimonial house for demand of dowry and she was murdered by strangulation. On satisfaction of all the

requirements necessary for the conviction based on circumstantial evidences he passed the impugned order.

11. The evidence on which the case of prosecution rests is the oral testimony of PW1 Jatru Md, the father of deceased Renuka Begam @ Khatun. He stated that after negotiation on gift and other things, one Moharnama was prepared before Nikah of his daughter with Sahidul Rahaman. Their Nikah was held on 21st February, 2011. Despite her Nikah appellant did not take her to his house as PW1 failed to provide the demand of Rs. 1 lakh (Rupees One Lakh only). So Renuka Begam @ Khatun was compelled to live with them. Later, he could pay Rs. 50,000/- (Rupees Fifty Thousand only) to appellant and rest was assured to pay during the time of Ruksudhi (Bidai) or social marriage. But he failed to pay the rest amount by Rukshudi. On this matter, appellant became dissatisfied. After Rukshudi Renuka went to her matrimonial home. She started to live with appellant as husband and wife. After 13 days of Ruksudhi he received an information on mobile that Renuka was not well. Accordingly, he along with Amirul, Samina Khatun, Wahab and Tajrul had been to her matrimonial house and found dead body of Renuka was lying dead on a bed. He noticed marks of nail on her neck. He also found swelling on her neck and blood in nose. When he asked appellant about the reason of her death, he kept mum. During cross-examination he admitted that her marriage with Sahidul Rahaman was solemnized on 26.12.2011 as per Muslim Shariya. He also admitted that he did not mention anything about demand of Rs.1 lakh (Rupees One Lakh only) by appellant but he stated

that he shared the factum of said demand to Abdul Hossain (his brother-in-law).

12. PW4 is Md Kamil stated that as per Moharbanda (Nikah) of Renuka with appellant Sahidul Rahaman was taken place about 8 to 9 months ago from the date of Ruksudhi (Bidai). After hearing the information of her death, he rushed there and noticed nail mark on her neck and injury on her both hands. However, in his cross-examination he admitted that "I did not see the offence"
13. PW5 Noor Alam was a tailor by profession who also observed that nail mark on the neck of Renuka and injuries on both hands and he put his signature on the inquest report. He admitted in his cross-examination that dead body of Renuka was lying on Chowki at the Verandah of the western room.
14. PW9 is Amirul Islam stated that despite Nikah of Renuka with appellant Sahidul Rahaman, she stayed for about 1 year at her father's house as appellant demanded cash of Rs. 1 lakh (Rupees One Lakh only). The said demand could not be satisfied by PW1 Jatru. Subsequently he gave only Rs. 50,000/- (Rupees Fifty Thousand only) to appellant, while assured to give rest amount till Rukshudi, but he could not pay the rest amount of Rs. 50,000/- (Rupees Fifty Thousand only) by the time of Ruksudhi. Anyhow, Renuka could go to her matrimonial home to live with appellant as husband and wife after her Rukshudi. He saw her dead body was lying and he noticed a spot on her face and mark of nails. In his cross-examination he admitted that he did not know whether demand of Rs. 1 lakh (Rupees One Lakh only) was written in

complaint or not but PW1 stated him about it. He denied the suggestion that Nikah of Renuka with appellant Sahidul Rahaman was held but Renuka resided with her parents for 10 months as Sahidul Rahaman did not take her to her matrimonial home out of his annoyance due to non-payment of Rs. 1 lakh (Rupees One Lakh only) to him admitted to pay in marriage gift. Only Rs. 50,000/- (Rupees Fifty Thousand only) was paid, rest Rs. 50,000/- (Rupees Fifty Thousand only) was assured to pay at the time of Ruksudhi but the said amount was not paid. That's why she was tortured and assaulted at her matrimonial home, and ultimately was strangulated by appellant out of annoyance. He finds dead body of Renuka was lying on the Verandah. He noticed mark of assault at her neck. However, he admitted in his cross-examination that "I stated to police about the demand of Rs. 1 lakh (Rupees One Lakh only) out of which Rs. 50,000/- (Rupees Fifty Thousand only) was paid and the rest amount Rs. 50,000/- (Rupees Fifty Thousand only) was not paid."

15. PW11 Sariful Islam, is a Registered Medical Practitioner by profession stated that Renuka and Sahidul was known to him and on a call of appellant he went to his house at about 6.50 a.m. and saw Renuka was lying died on the bed. He examined her by opening of her eyes and found dead. PW11 was declared hostile by the prosecution and during cross-examination of prosecution he denied the suggestion that during examination of Renuka he asked appellant "ai ki korly" (What did you done?) to which appellant replied "Ami, morejabe bhabini" (I did not expect that she will die). During cross-examination he stated that

appellant is not his relative but he is like his grandson in village courtesy.

16. PW12 Mantu Barman is the I.O. of this case. He noticed mark of assault on the body of deceased, injury marks on both sides of below armpit as well as back part of her body and both thighs as he noted in suratehal report. He also stated that he examined PW11 who stated to him that “he noticed nail marks on her neck”. Then he asked appellant “ai tui ki korly” who replied “Ami, morejabe bhabini”. In cross-examination PW12 stated that no witness stated anything about the demand of Rs. 1 lakh (Rupees One Lakh only) and its payment either partial or full. However, appellant Sahidul Rahaman confessed his guilt to him. He made a prayer for recording of his statement under Section 164 of Code of Criminal Procedure, 1973 but appellant refused. Appellant is Moulavi by profession but timing of leaving for Masjid had not mentioned in CD.
17. Prosecution also relied on the documents exhibited during trial to corroborate his case. These are Exhibit 1 written complaint, Exhibit – 4 Surathal Report, Exhibit – 5 is the report of inquest over dead body by Executive Magistrate under Section 174 of Code of Criminal Procedure, 1973 conducted and prepared by Aswini Kumar Roy, Executive Magistrate, Islampur and Exhibit – 6 is post-mortem report also corroborates the injuries and death of Renuka Begam @ Khatun, while the Kajinamah i.e., Islamic marriage certificate collected and seized under seizure list exhibit 9 corroborates the Nikah of Renuka Begam @ Khatun with Sahidul on 21st February 2011.

18. Exhibit – 4 reveals that sign of injury on both sides of throat, blood clotted at ribs, back and legs.
19. Exhibit – 5 was prepared by Executive Magistrate on 08.01.2012 at 2 p.m. at the Chopra P.S. During inquest he found clotted blood on nostril, scratches on both sides of the neck, few scratches at left hand, blood clotting at the back, scratches below the neck, few scratches at the left hand and few scratches were also found at the both sides of throat.
20. The post-mortem report (Exhibit – 6) reveals that:
 - i. One crescentic nail scratch abrasion of 1 cm x 5 cm in size at her left side of neck below left angle of mandible.
 - ii. One crescentic nail scratch abrasion of 1cm x 1/2 cm in size at the right side of neck below right angle of mandible.
 - iii. Subcutaneous tissues are lacerated.
 - iv. Orbital, nasal and aural cavities were found congested.
 - v. Fracture of Hyoid bone at its right side is noted.

Autopsy Surgeon (PW7) opined that all injuries are ante-mortem in nature and the death was suffocative (Asphyxial) death due to manual strangulation.

21. Exhibit – 9 is the seizure-list in which one Kazinamah i.e., Islamic marriage certificate issued by Kazi Tamijuddin was recovered and seized by I.O. which corroborates the fact of Nikah between Renuka and appellant Sahidul. As per the Kazinamah Nikah of Renuka Begam @ Khatun with Sahidul Rahaman was held on 21st February, 2011.

22. Appellant as DW No.1 did not give any specific explanation to the question nos. 3 and 9 placed to him asked in respect of causing physical and mental torture upon Renuka for more dowry demand of Rs. 50,000/- (Rupees Fifty Thousand only) as put to him during examination under Section 313 of Code of Criminal Procedure, 1973, to which he replied "it is all false". He did not give any explanation in his evidence as Defence Witness No.1 as well.
23. DW1 Appellant itself stated that he is Moulavi by profession and prays Ajan in the local Masjid 1 km from his house. The first Ajan starts at 4 a.m. so he left house at 3.30 a.m. to reach Masjid by 4 a.m. and complete the prayer by 5 a.m. After completing the prayer, he returned house by 5.30 a.m. when he found Renuka was assaulted and she was dead. At the time of leaving home Renuka was in good condition at the home. During cross-examination he has admitted that he did not have any paper to show that he is the Moulavi of any Masjid. He also admitted that he did not lodge any complaint to police or Magistrate, that Renuka was assaulted by someone causing her death. His village Masjid is situated at Daspara near his house.
24. DW-2 Azizul Haque stated that on 8th January, 2012 at about 4 to 4.30 a.m. he had been to Shaikhabasti Masjid for praying namaj and Sahidul Rahaman was there in said Masjid for praying namaj. Namaj was completed by 4 to 4.30 a.m. and he reached his house by 5 a.m. In his cross-examination he admitted that at the relevant time of incident he had been to Daspara Masjid for praying namaj. He had been to said Masjid for praying Namaj and Sahidul Rahaman was in Shaikhabasti

Masjid for praying namaj. He also admitted that another person was there for prayer in said Shaikhabasti Masjid at that time. He was there at Daspara Masjid for 6 to 6.30 a.m. after praying namaj on 8th January, 2012. Both Masjids are about half kilometer away from each other. Generally, it takes 30 minutes to cover the distance.

25. As we have seen from the evidence of the prosecution that Nikah of Renuka and appellant Sahidul Rahaman was held on 21st February, 2011 and social marriage as per Shariya was held on 26th December 2011. She stayed with her parents till the date of Rukshudi i.e., 26th December, 2011 when she started to live her matrimonial life with appellant at her matrimonial home. She stayed there till her last breath. Her dead body was found dead in the morning of 8th January 2012.
26. The evidence of prosecution also reveals that witnesses noticed mark of injuries, nail marks and black spot at both side of throat, neck, face back, thigh, hand, legs and other part of her body. All the witnesses stated in unison that there was mark of assault on her dead body. On the basis of said injuries PW1 had apprehension that Renuka was murdered by strangulation. No question has been asked in cross-examination to contradict the version of PW1 to cause the doubt about his apprehension that his daughter was murdered by strangulation. The fact of assault of Renuka is also admitted by DW1 accused-appellant. The number, nature and place of injuries are also corroborated by Exhibit – 4, Exhibit – 5 and Exhibit – 6.
27. The cause of death as opined by the autopsy surgeon in post-mortem report of Renuka was happened due to suffocative (Asphyxial) i.e.

manual strangulation. It supports the apprehension of PW1 that his daughter was killed by appellant by strangulation. Therefore, we do not find any reason to disbelieve this evidence of prosecution as these facts are based on the unchallenged evidence of prosecution witnesses and exhibited documents. Therefore, nikah of deceased with appellant and death at her matrimonial house is undisputed facts. Presence of marks of injuries is also established from the version of prosecution witnesses and supportive documents. Her death was caused due to strangulation is also determined by the medical documents. Nothing is on record to discard it.

28. The only question which needs its determination is who was behind Renuka's strangulation and assault? Since no one witnessed the incident, the determination of this question totally based on the interpretation of circumstantial evidences. Circumstantial evidence is less convincing than direct evidence. Careful evaluation of such evidences is necessary. For the sake of convenience in evaluation and interpretation of circumstantial evidences, Hon'ble Supreme Court has formulated a set of guidelines in *Hanuman vs State of Madhya Pradesh* reported in AIR 1952 (2) SC 343. The guidelines are:

- a. The circumstances from which the conclusion of guilt is to be formed must be completely established, and they must be of a conclusive nature and tendency.*
- b. They should exclude every possible hypothesis except the one to be proved.*

- c. *There must be a chain of evidence so thorough that it leaves no reasonable room for a finding consistent with the accused's innocence and must demonstrate that the act must have been committed by the accused in all human probability.*

These guidelines are not only widely followed by Courts in subsequent cases but also established a standard for evaluating circumstantial evidence in criminal trials.

29. The Supreme Court articulated *five golden principles, or 'the panchsheel for the proof of a case based on circumstantial evidence'* in *Sharad Birdhichand Sarda v. State of Maharashtra* reported in (1984) 4 SCC 116 wherein it was held that circumstantial evidence can be a sole basis for conviction, provided they are fully established and be consistent only with the hypothesis of the guilt of the accused as expressed in paragraph -

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

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

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

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

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

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

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus:

“Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.”

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will

amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,*
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and*
- (3) the circumstance is in proximity to the time and situation.*

30. In *Shailendra Rajdev Pasvann and others v. State of Gujarat and others*, (2020)14 SCC 750, Hon'ble Supreme Court has enunciated the principle by adding that: -

13. Thus, the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates twofold requirements:

- (i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.*
- (ii) All the circumstances must be consistent pointing only towards the guilt of the accused.*

14. This Court in *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681 has enunciated the aforesaid principle as under: (SCC p. 689, para 12)

“12. ... The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

15. Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person. In *Bodhraj v. State of J&K*, (2002) 8 SCC 45, *Rambraksh v. State of Chhattisgarh*, (2016) 12 SCC 251: *Anjan Kumar Sarma v. State of Assam* (2017)

14 SCC 359. In *State of Gujarat v. Shailendra Rajdev Pasvan*, 2016 SCC OnLineGuj 9958 Apex Court held that -

“16. ...The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.”

31. Recently, in *Raja Naykar v. State of Chhattisgarh* (2024) 3 SCC 481 Hon'ble Supreme Court has held that convictions based on circumstantial evidence must adhere to strict principles. The prosecution must fully establish circumstances that are consistent only with the guilt of the accused and exclude every possible hypothesis except guilt. These circumstances should form a complete chain of evidence leaving no reasonable doubt about the accused's guilt. The Court reiterated that suspicion, no matter how strong, cannot substitute for proof beyond reasonable doubt, affirming the presumption of innocence until guilt is proven conclusively.

32. We find following principles are necessary to follow by a Court to decide the guilt or innocence of a person entirely based on the circumstantial evidences.

- i. The circumstances from which the conclusion of guilt is to be drawn must be fully established and all the facts, so established must be consistent only with the hypothesis of the guilt of the accused.
- ii. The circumstances must be of a conclusive nature, and they should be such as to exclude every hypothesis except the one proposed to be proved.
- iii. There must be a complete chain of circumstances, with no reasonable ground for a conclusion consistent with the innocence of the accused.
- iv. The circumstances, taken collectively, must be incapable of explanation of any reasonable hypothesis save that of the guilt of the accused.

33. In respect of importance of motive in a case based on the circumstantial evidences, Hon'ble Supreme Court held in *State of Gujarat v. Kishorebhai Nathalal Patel* (2017) that *motive alone cannot be the sole basis for conviction, but it can be considered as a piece of evidence along with other circumstantial evidence. Motive assumes greater significance in cases relying solely on circumstantial evidence, as it is an important link in the chain of circumstances. However, the absence of a clear motive does not necessarily negate the prosecution's case if the other circumstantial evidence is strong and when chain of proved circumstances is complete as Supreme Court expressed his views in G. Parshwanath Vs. State of Karnataka, AIR 2010 SC 2914 and Jagdish Vs. State of M.P., (2009) 9*

SCC 495. It has been expressed in Sanjeev Vs. State of Haryana, (2015) 4 SCC 387 that to establish an offence against an accused, motive is not required to be proved. Motive is something which prompts a man to form an intention. The intention can be formed even at the place of incident at the time of commission of crime. In order to read either intention or knowledge, the Courts have to examine the circumstances, as there cannot be any direct evidence as to the state of mind of the accused.

34. The "last seen theory" is relevant when the time gap between the accused and the deceased being last seen alive and the discovery of the deceased's death is very short, making it impossible for any other person to be the perpetrator. However, the last seen theory alone is not sufficient to convict the accused, and must be supported by other circumstantial evidence. Circumstantial evidence can be sufficient to establish guilt beyond a reasonable doubt, even in the absence of direct evidence. However, the circumstantial evidence must be such that it leads to the conclusion that the accused's guilt is the only reasonable hypothesis, and excludes any other reasonable possibility. The Court must approach the task of fixing criminal liability on the basis of circumstantial evidence with abundant caution.

35. Undoubtedly, Renuka and Sahidul Rahaman were living together as husband and wife. The incident was happened any time between 3.30 to 4.30 a.m. as per the probable time of death indicated in post-mortem report. We are arriving at the same time range by calculating the time considering presence of rigor mortis on the dead body. It is general presumption of fact that husband and wife are living together in the

night hour. Presence of appellant with deceased is also admitted by DW1, wherein he stated that till 3.30 a.m. he was with his wife and she was in good condition till then. It is the appellant who first saw her dead body at 5.30 am when he returned home from masjid. Nothing is on record to show the presence of third person or intruder near deceased, in the meantime. It supports the presumption that appellant was last seen together with Renuka prior to her death because evidence is silent as to the presence of any third person inside her bedroom after that. If appellant was last resided with deceased, then he was the best person who can give proper explanation on the fact that how she received number of injuries at different part of her body, but he failed. On the contrary he tried to establish alibi from the scene of occurrence by adducing a cock and bull story that he left his house at 3.30 am to reach Shaikhabasti Masjid to attend morning ajan at by 4 a.m. and after performing ajan he returned home by 5.30 a.m. when he found his wife dead. As per him entire incident happened within said 2 hours when he was not there. When he left house Renuka was in good condition and he found her dead after returning home from masjid. He was the first person who saw her dead body. But he neither bother to inform the incident to nearest police station nor to any competent authority nor to his relatives. However, he called PW11 who saw Renuka was lying dead at 6.50 a.m. and asked him “ai ki korly” (What did you do) to which appellant replied “Ami morejabe bhabini” (I did not expect that she will die). Prior to him none of his family members saw her dead body. He failed to explain the incident happened in the meantime.

36. In respect of credibility of his evidence he deposed as DW1 that he is moulvi by profession and went Sheikhbasti mosque for morning ajan. He clearly stated that morning ajan starts at 4.00 am and continues for an hour. It completed by 5.00 am. Then he returned home by 5.30 am. For verification of these facts we considered the Islamic Calendar prevalent among the Muslims residing in West Bengal. As per the Islamic calendar the timing of fajr i.e., first namaj was 4.58 am and of sun rise was 6.16 am, on 08.01.2012. Ajan is meant to send a message among the followers to get ready for morning namaj. Generally, morning prayer started after 15 to 30 minutes of the ajan depends on the local condition and requirement. It takes 15 minutes in effective prayer. Generally, total time consumes in prayer including 15 minutes waiting or preparatory period after ajan, is 30 minutes. People generally leave home after hearing call of ajan. Leaving home prior to 5.00 am does not sound logical. It seems that there was a cat in the appellant's bag so that he was in haste to leave his home at 3.30 am to reach masjid by 4.00 am, i.e., one hour before the scheduled time of ajan at 4.58 am, that too in harsh winter's morning. Discrepancies also appears in his statement that he finished his prayer by 5.00 am, while DW-2 Azizul Haque stated that on 8th January, 2012 at about 4 to 4.30 a.m. he had been to Shaikhbasti Masjid for praying namaj and Sahidul Rahaman was there in said Masjid for praying namaj. Namaj was completed by 4 to 4.30 a.m. and he reached his house by 5 a.m. how could it be possible? The time for ajan was scheduled to be started at 5.00 am and they completed their namaj by 4.30 am and 5.00 am and reached home by 5.00 am and

5.30 am by covering the distance in half an hour while the process of ajan had to be finished not prior to 5.30 am. DW2 stated that appellant was not acting as moulvi in the mosque on 08.01.2012. It is simply an unbelievable statement. It is also strange that why he preferred to go farthest mosque at Sheikhabasti masjid on that day, while Daspara masjid was at the stone thrown distance from his house. Nothing is on record to explain such mysterious conduct. If a person observes any abnormal behaviour on certain day without any proper explanation, would be considered as an additional link to the circumstance against accused.

37. However, Learned Counsel for the appellant placed it as suspicious behaviour of appellant and submitted that suspicion, no matter how strong, cannot substitute the burden of prosecution to prove his case beyond reasonable doubt. He relied on the view of the Hon'ble Supreme Court held in *Parubai v. State of Maharashtra* (2021) 18 SCC 353.

38. It is the golden principle of criminal jurisprudence that statutory burden is always remains on the prosecution to prove his case or guilt or allegation of an accused beyond the reasonable doubts, irrespective of the facts that case is based on circumstantial evidence or direct evidence. The same is reiterated in *Anand Ramachandra Chougule v. Sidarai Laxman Chougala*, in (2019) 8 SCC 50.

39. We concede the views of Supreme Court. Considering contradictions to decide a case based on circumstantial evidences is not amount to deviation from the above principle. Definitely, benefit of doubt will go in favour of the accused, but inherent contradictions in the evidences

would not. Learned Trial Court has taken into account only those contradictions and considered them as an additional link to the circumstances to prove the guilt of appellant in view of Hon'ble Supreme Court held in *Nagendra Shah vs State of Bihar* (2021) 10 SCC 725.

40. Section 106 of the Evidence Act, 1872 gives an opportunity to the accused to place the evidences which were especially under his knowledge. Appellant had opportunity to disclose such facts to rebut the factual presumption but failed to do so. The Learned Counsel placed reliance on the view of Hon'ble Supreme Court expressed in *Vikramjit Singh v. State of Punjab* reported in (2006) 12 SCC 306 wherein it has been held that Section 106 of the Evidence Act, 1872 places the burden on the accused to explain facts within their special knowledge, once the prosecution establishes its case beyond reasonable doubt, and in *Anees v. The State Govt of NCT, 2024 Live Law (SC) 344*, that "*To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden, does not seem to support the contention of the appellant as the prosecution has been able to establish the culpability of the accused and now it is his duty to clear and remove all such doubts and inferences capable of being drawn from such incriminating materials to prove his innocence*".

41. We came to the conclusion that prosecution is able to establish chain of circumstances which are sufficient to prove the guilt of accused. Nikah of Renuka Begam @ Khatun with appellant was solemnized on 21st February 2011, ceremony of social marriage with Rukshudi was

celebrated on 26.12.2011 and she died on 08.01.2012 at her matrimonial home due to strangulation and assault is proved by prosecution evidence. Appellant was last seen together with deceased till he left home. The appellant inflicted torture, assault and murder of Renuka Begam @ Khatun due to annoyance for non-payment of Rs. 50,000/- (Rupees Fifty Thousand only). The circumstances help us to draw a presumption that it was the appellant who present at place and time of occurrence. Other contradictions are not material in nature.

42. Therefore, on the basis of above discussions, we arrived at conclusion that –

- i. Motive is not important in the case where the links of circumstances are well connected.
- ii. The presumption of last seen or last resided together of accused with the victim or deceased shall be attracted, where presence of other person is usually or legally not presumed and presence of the accused is highly probable, unless anything contrary does not come on record to rebut the presumption.
- iii. The evidence of defence witness is substantive in nature and can be evaluated in proper perspective, like any other evidences, to derive any inferences including guilt or innocence of a person.
- iv. If a party fails to provide facts which are within his especial knowledge, it shall be considered as an additional link in the chain of circumstances.

43. In view of the aforesaid discussion, we conclude that there are no irregularities or mistake in the impugned order. The prosecution fully established the circumstances which are consistent only with the guilt of the appellant and excludes every possible hypothesis except his guilt. These circumstances formed a complete chain of evidence leaving no reasonable doubt about the appellant's guilt.
44. Therefore, we find that the Learned Trial Court did not commit any mistake in passing the impugned order. We concur with the finding recorded by the Learned Trial Court. The order of conviction and sentence suffers with no infirmities/ irregularities. So, we do not think that intervention of this Court is required. Therefore, we affirmed the impugned judgment and order of Learned Trial Court.
45. Accordingly, the appeal fails.
46. Appellant shall serve the remaining period of sentence as per the provision of law.
47. Trial Court Record be sent down.
48. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

I agree

(Soumen Sen, J)

(Uday Kumar, J)