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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(341)

CRA-D-238-DB-2005 (O & M)
Reserved on: 05.02.2025
Date of Pronouncement: 11.02.2025

Kulwant Kaur and ors. Appellants

V/s

State of Punjab ...Respondent

**CORAM: HON’BLE MR. JUSTICE GURVINDER SINGH GILL
HON’BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Ms. Kashish Sahni, Advocate as Amicus Curiae
for the appellants.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 18/20.01.2005 passed by the Sessions Judge, Kapurthala.

2. The instant FIR came to be registered on 23.09.2003. The accused-appellants came to be convicted vide judgment of conviction and order of sentence dated 18/20.01.2005. The present appeal against the

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matter has come up for final hearing now after more than 21 years of the registration of the FIR.

3. The facts, in brief, are that Sucha Singh complainant, was working at the in Rail Coach Factory, Hussainpur, Kapurthala. His son Sohan Singh (deceased), who was also working at the Rail Coach Factory, Kapurthala, was married to Kulwant Kaur (accused-appellant No.1) daughter of Kashmira Singh, resident of Chhoti Tibbi Jeon, about 12 years ago. From this wedlock, two daughters and one son, were born. Sucha Singh, went came to meet his son, on the night of 22/23.09.2003, at about 10-30/11-00 pm, at his quarter No.2233, near Railway Station, Kapurthala. He knocked at the door of the quarter of Sohan Singh as the same was bolted from inside. He heard shrieks from inside the quarter. He looked into the quarter through a hole in the window, where the cooler was fixed. A light was glowing, inside the quarter. A rope of nylon, had been put in the neck of Sohan Singh, by Nathu Ram alias Laddi (accused-appellant No.3) and he was twisting the same. Gurdev Singh alias Mangi (accused-appellant No.2), was sitting on the chest of Sohan Singh and was pressing the same. Kulwant Kaur, daughter-in-law of Sucha Singh, and wife of Sohan Singh, had pressed his (Sohan Singh's) feet. Gurdev Singh alias Mangi was tying the hands and arms of Sohan Singh, with a scarf (Chunni). Sucha Singh, being perplexed, knocked at the door, with full force. Gurdev Singh alias Mangi and Nathu Ram alias Laddi opened the door and looked at Sucha Singh. They told him

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that in case he informed the police or raised an alarm, he would also be dealt with in the same manner, in which, Sohan Singh was being dealt with. They further told him that he should run away from the spot. Being afraid, Sucha Singh went to his quarter, situated at the Rail Coach Factory, Hussainpur, Kapurthala. On the morning of 23.09.2003, he told his othe son Sukhwinder Singh and other members of the family about above incident. He alongwith his son Sukhwinder Singh, reached the quarter of Sohan Singh at 7.00 a.m. on 23.09.2003 and saw that the door of the quarter was lying open. The dead body of Sohan Singh was lying there. Sukhwinder Singh was left to guard the dead body of Sohan Singh and Sucha Singh, proceeded towards the Police Station to lodge the report. About one and a half months earlier, Sohan Singh had told Sucha Singh that Kulwant Kaur, his wife, was having illicit relations with Nathu Ram alias Laddi and Gurdev Singh allas Mangi. He had further told Sucha Singh, that both these accused used to come to his quarter quite often. He had also told Sucha Singh that he was apprehending danger to his life at the hands of both these accused. Kulwant Kaur, Gurdev Singh alias Mangi and Nathu Ram alias Laddi, accused-appellants had committed the murder of Sohan Singh on account of illicit relations.

4. On 23.09.2003, Gurmit Singh Inspector/SHO, P.S.City, Kapurthala, had held a picket at Aujla Level Crossing in the area of Kapurthala alongwith other police officials. At about 7.30 a.m, Sucha Singh-complainant came to him at that place and made his statement Ex.PL

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narrating the allegations as above. It was read over and explained to him, who after admitting the same to be correct, signed it. Thereafter, an endorsement, Ex.PL/1, was appended thereon, by Gurmit Singh, Inspector and a Ruqa was sent to the Police Station, through Des Raj Constable, on the basis whereof, FIR, Ex.PL/3, was recorded by SI Sumandeep Singh. Thereafter, Gurmit Singh, Inspector, aforesaid, alongwith the complainant, reached Quarter No.2233, near Railway Station, RCF Colony, Kapurthala, which was the place of occurrence. About 10 respectable persons, were found present there. In their presence, the spot was inspected. The dead body of Sohan Singh, was lying on a bed, in a room, located near the entrance of the gate of the said quarter. Site plan, Ex.PM, was prepared with correct marginal notes. One rope (*Rassi* i.e. a piece of nylon Niwar) about 2½ feet, in length, having knots on both ends, one scarf (*Chunni*) having embroidery, one strip of alpics tablets (*Patta*), two photographs lying on the TV, wrapped in a paper, which were of Kulwant Kaur and Gurdev Singh alias Mangi one purse, containing one passport size photo, one driving licence, one handwritten slip of Kulwant Kaur and one currency note of Rs.10/- were lifted from the spot. These were taken into possession vide memo Ex.PH attested by Rajinder Singh ASI and Pargat Singh Head Constable. Thereafter, inquest report Ex.PK, of the dead body of Sohan Singh was prepared. The dead body was identified by Gulzar Singh and Inderjit Singh. The statements of Gulzar Singh and Inderjit Singh were recorded under

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Section 175 Cr.PC. The dead body of Sohan Singh, was handed over to HC Pargat Singh and Kuldip Singh Constable, for getting the post-mortem examination conducted, alongwith the request Ex.PD from Civil Hospital, Kapurthala. Gurmit Singh Inspector, alongwith other police officials, started for the Police Station and when they reached Garari Chowk, Kapurthala, secret information was received that the accused were roaming about in the City. A picket was held in D.C.Chowk, Kapurthala. At about 4.30 p.m. Kulwant Kaur, Nathu Ram alias Laddi and Gurdev Singh alias Mangi, accused-appellants were seen coming. They were arrested with the help of other police officials. Their arrest memos Ex.PN, Ex.PN/1, and Ex. PN/2, respectively were prepared. Thereafter, the police party was coming back to the Police Station. On the way, at Phuwara Chowk, Kapurthala, Pargat Singh, Head Constable and Kuldip Singh Constable, met it. They produced the clothes of the deceased. These clothes were converted into a parcel, sealed with the seal, bearing impression GS and taken into possession, vide memo Ex. PJ, attested by Rajinder Singh, ASI, Pargat Singh Head Constable and Kuldip Singh Constable. Thereafter, the police party returned to the Police Station. The case property was deposited with the MHC with seals Intact.

5. On 24.09.2003, the accused were produced before the Illaqa Magistrate. They were interrogated. On 30.09.2003, Gurmit Singh Inspector, alongwith other police officials, went to Quarter No.421-B, belonging to

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Sucha Singh-complainant. Jasbir Singh ASI, also accompanied them. Surinder Kumar, Photographer, was also present with them at that time. He was having a Video camera at that time. Manpreet, Harpreet and Bhupinder Singh, children of Sohan Singh, deceased and Sucha Singh were present there. Manpreet Kaur daughter of Sohan Singh-deceased, was put questions and video movie of her statement, recorded in 'Question Answer' form, was prepared. She stated that Gurdev Singh alias Mangi and Nathu Ram alias Laddi, accused-appellants No.2 and 3, used to come to their house. She disclosed that Nathu Ram alias Laddi and Gurdev Singh alias Mangi accused, came to their house on the night intervening 22/23.09.2003. Gurdev Singh alias Mangi, Nathu Ram alias Laddi and Sohan Singh, her father, took liquor together. When they became intoxicant, the light was glowing. Nathu Ram alias Laddi, accused-appellant No.3, strangulated the throat of Sohan Singh, with a string. Gurdev Singh alias Mangi, accused-appellant No.2, sat on his chest whereas, Kulwant Kaur, accused-appellant No.1, had held him by his feet. Jasbir Singh, ASI, was recording the questions and answers simultaneously. Video Script, Ex.PL/1, was prepared with regard to the questions and answers aforesaid, which was signed by Jasbir Singh, ASI and Sucha Singh. Video Cassette, Ex.P18, so prepared, was taken into possession. After the completion of investigation, the accused were challaned.

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6. On commitment, charge under Section 302 read with Section 34 of the Indian Penal Code was framed against the accused. They pleaded not guilty to the charge and claimed trial.

7. The prosecution in support of its case, examined as many as 9 witnesses. Dr.Kamaljit Singh, Medical Officer, Civil Hospital, Kapurthala, PW-1 on 23.09.2003, conducted the post mortem examination, on the dead body of Sohan Singh son of Sucha Singh, Caste Julaha, resident of Quarter No.2233, near Railway Station, RCF Colony, Kapurthala, 36 years, male.

He found the following injury, on his person :-

1) There was ligature mark present on anterior and lateral parts of neck, crossing laryngeal prominence measuring 36 cm x 2 cm extending posterior inferiorly towards posterior part of neck. 11 cm posterior neck area was spared. The ligature mark was well defined, less prominent on edges both sides, brownish in colour. On dissection, Soft Tissues underlying ligature marks were dry, hard, glistening, patchial hemorrhage were present at places, soft tissues and muscles of neck were congested. Muscles, major vessels, cervical vertebrae were intact. There was fracture of laryngeal bone, tracheal ring under ligature mark. Laryngeal cavity was full of blood. At edges both sides underlying tissue pressure signs decreasing.

8. The probable time that lapsed between injury and death, was immediate and between the death and post-mortem was within 12 to 18 hours. The cause of death, in this case, was not given at the time of post-mortem examination. It was to be given after the receipt of the report of the

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Chemical Examiner to whom the viscera of the deceased was sent. He proved Ex.PA, the exact carbon copy of the post-mortem report and Ex.PA/1 and Ex.PA/2, the pictorial diagrams. On receipt of the report of the Chemical Examiner Ex.PB, no poison was detected in the viscera of the deceased. In the opinion of the Doctor, the cause of death, in this case was asphyxia as a result of injury on the neck described which was sufficient to cause death in the ordinary course of nature. The Doctor sent the report Ex.PC, in this regard to the police.

9. Sucha Singh PW-7 the complainant made his statement with regard to the date, time and place of occurrence and the illicit relations, Kulwant Kaur, one of the accused, was carrying on with the other two accused. Manpreet Kaur PW-8, a child witness and daughter of Sohan Singh, who was present in the quarter at the time of occurrence also made a statement to the similar effect.

10. Sukhwinder Singh, Ahlmad (Criminal), in the Court of the Chief Judicial Magistrate, Kapurthala, stated that on 28.09.2003, an application Ex. PE was moved by the police before Sh.A.L.Khichi, Addl. Chief Judicial Magistrate, Kapurthala, for obtaining the specimen signatures of Kulwant Kaur, accused, but she was not prepared to give her specimen signature, as the police had already obtained her signatures thereon. His statement, Ex.PE/1, was recorded by the Addl. Chief Judicial Magistrate, Kapurthala, which was thumb-marked by Kulwant Kaur. Surinder Kumar

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Chopra, PW3, took the photographs of the place of occurrence, near the Railway Station, RCF Colony, Kapurthala. He handed over the negatives, Ex. P3 to Ex.P6 and the photographs Ex.P7 to Ex.P10 to the police. Vijay Anand, PW-4 prepared the scaled map Ex.PF, of the place of occurrence. Nirvail Singh, Constable PW-5, delivered the special report Ex.PG to the Illaqa Magistrate. Pargat Singh, Head Constable PW-6, was a witness to the recovery memo, Ex.PH, vide which, the articles lying near the dead body, were lifted and taken into possession. He also got conducted the post-mortem examination on the dead body of Sohan Singh. He was handed over the clothes of the dead body by the Doctor. He handed over the same to Gurmit Singh, Inspector.

11. Gurmit Singh, Inspector PW-9, was the Investigating Officer and his testimony already stands narrated here.

12. The Public Prosecutor gave up Kuldip Singh, Inderjit Singh Constables, Gulzar Singh Head Constable, Rajinder Singh ASI, Sukhwinder Singh MHC, Sumandeep Singh Sub Inspector, Harpreet Kaur and Bhupinder Singh Prosecution Witnesses, as unnecessary and closed the prosecution evidence.

13. The statements of the accused-appellants were recorded under Section 313 Cr.P.C. All the incriminating circumstances, appearing against them in prosecution evidence were put to them.

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Kulwant Kaur, accused-appellant No.1, in her statement, under Section 313 Cr.PC stated that she was innocent. Sohan Singh-deceased had gone out of the house in the evening and did not return. In the morning, when the police came, he was found dead in the quarter of Gurmukh Singh. She stated that nothing was recovered from her house. All the articles allegedly recovered were planted upon her in the morning. The police forced her to write down on the papers and sign the same. The police also forced her to give snaps with Gurdev Singh alias Mangi, which were clicked. The video film was also prepared after tutoring Manpreet Kaur by her grandfather-Sucha Singh. She stated that she had been falsely implicated in this case by Sucha Singh as her relations with her in-laws were not cordial.

Gurdev Singh alias Mangi, accused-appellant No.2, in his statement under Section 313 Cr.PC, claimed that he was innocent. He stated that on 23.09.2003, in the morning, he was arrested by the police from his house and was brought to quarter No.2235 of Gurmukh Singh and was forced by the police to give a photo with Kulwant Kaur. He stated that he had been falsely implicated in this case.

Nathu Ram alias Laddi, accused-appellant No.3, in his statement under Section 313 Cr.PC, stated that he was innocent. He had been arrested by the police from his house and was falsely implicated in this case.



14. Based on the evidence led, the accused-appellants, namely, Kulwant Kaur, Gurdev Singh alias Mangi and Nathu Ram alias Laddi came to be convicted and sentenced by the Court of the Sessions Judge, Kapurthala vide judgment of conviction and order of sentence dated 18/20.01.2005 as under:-

Offence U/S	Sentence RI/SI	Fine	RI/SI in default of payment of fine
302/34 IPC	Life Imprisonment each	Rs.2,000/- each	RI 01 month each

15. The aforementioned judgment of conviction and order of sentence dated 18/20.01.2005 passed by the Sessions Judge, Kapurthala, is under challenge before this Court.

16. During the pendency of this appeal, the sentences of the accused-appellants, namely, Kulwant Kaur, Gurdev Singh alias Mangi and Nathu Ram alias Laddi were suspended by this Court vide orders dated 29.02.2008, 16.02.2009 and 25.03.2009 respectively.

17. The learned Amicus Curiae for the accused-appellants contends that the testimony of PW-7/complainant-Sucha Singh cannot be believed and he does not appear to be an eye-witness. His unnatural conduct at the spot makes his presence doubtful. As per his deposition, he travelled 7½ kms. from his own quarter to that of his son at 10.30 p.m. at night, saw the occurrence, was threatened by the accused, did not interfere or approach the neighbours or the police, came back home and went back the next day with

his other son. (PW-6/Head Constable Pargat Singh has also admitted that

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there was a police post at the Railway Coach Factory). The complainant has admitted that Police Station Sadar, Kapurthala was on the way to the house of his son, the police post of the Railway Coach Factory was 75 yards from the house of his son and Police Station City, Kapurthala was half kilometer away from the house of his son. Other residential houses were around but he did not raise an alarm. Therefore, no reliance can be placed on his testimony.

18. She contends that PW-8/Manpreet Kaur, the daughter of the deceased and accused-Kulwant Kaur has rightly been disbelieved by the Trial Court. Her statement during the course of investigation under Section 161 Cr.P.C. was recorded on 30.09.2003, seven days after the occurrence. During the course of her cross-examination, she has categorically admitted that she was residing with her grand-father/PW-7-Sucha Singh and he alongwith her uncle-Balbir Singh had tutored her to make a statement after which the police had got prepared her video film. She has further stated that the occurrence had taken place in the room in which she alongwith her siblings were sleeping and after the murder of her father, she had gone to sleep. Thus, conduct of this witness is highly unnatural. The learned Amicus Curiae, therefore, contends that the testimony of this witness cannot be accepted and has been so held by the Trial Court.

19. She next contends that the place of occurrence is doubtful inasmuch as the prosecution has not been able to bring on record whether the

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body of the deceased was found in a quarter No.2233 or in quarter No.2235 which stands in the name of one Gurmukh Singh. This lacuna in the investigation creates a doubt in the entire prosecution case because of which the accused are liable to be acquitted.

20. She further contends that the two photographs of Kulwant Kaur and Gurdev Singh @ Mangi together, allegedly recovered from quarter No.2233 cannot read in evidence in the absence of the photographer being examined and the negatives being brought on record. Therefore, there is no motive for the commission of the offence. Reliance is placed on '*State of Gujarat versus Bharat alias Bhupendra 1991 CriLJ 978, Joyita Saha versus Rajesh Kumar Pandey 2000(2) LJR 768 and Arun Balakrishan Iyer and Anothers versus M/s Soni Hospital and Others 2004(1) CivCC 183*'.

21. She, lastly, contends that if this Court was to reject the testimonies of PW-7/Sucha Singh and PW-8/Manpreet Kaur alongwith the photographs Ex.P-15 and P-16 purportedly showing the accused-appellant No.1/Kulwant Kaur in the company of accused-appellant No.2/Gurdev Singh @ Mangi, then atleast Gurdev Singh @ Mangi and accused-appellant No.3/Nathu Ram @ Laddi ought to be acquitted and the liability, if any, would fall on Kulwant Kaur alone in whose residence the occurrence has taken place in view of Section 106 of the Evidence Act.

22. The learned counsel for the State, on the other hand, contends that the testimony of PW-7/Sucha Singh-complainant is consistent in

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material particulars. His version cannot be doubted. He saw the occurrence in which his son was assaulted but out of fear, ran away from the spot. Every human being reacts to a situation in a different way and therefore, merely because this witness ran away from the spot does not create a doubt in his version.

He contends that the testimony of PW-8/Manpreet Kaur has wrongly been disbelieved by the Trial Court. She was a most natural witness being the daughter of the deceased-Sohan Singh and the accused-Kulwant Kaur and therefore, her presence at the spot cannot be doubted.

The photographs of accused-Gurdev Singh @ Mangi and Kulwant Kaur were recovered from the spot which points towards the motive for the murder of the deceased-Sohan Singh.

He, therefore, contends that the present appeal is liable to be dismissed.

23. We have heard the learned counsel for the parties.

24. PW-7/Sucha Singh-complainant is the father of the deceased. As per the FIR and as per his deposition, he had gone to the house of his son at 10.30 p.m. at night, knocked at the door which was not opened. Thereafter, he saw the occurrence from a window in which the cooler had been fitted, after which he shouted on which the accused persons came out and threatened him. Out of fear, he went away from the spot back to his house, disclosed about the incident to his son-Sukhwinder Singh and came

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back to the quarter of the deceased next day. This conduct of this witness is most unnatural. His going to the place of occurrence which was 7½ Kms. from his own house at 10.30 p.m. itself is doubtful. He saw the occurrence, did not interfere in the beating being given to his son, chose not to shout or raise an alarm so as to awaken the neighbours or approach the police of police post, Railway Coach Factory which was only 75 yards away, Police Station City Kapurthala which was only half a kilometer away or Police Station Sadar Kapurthala which was on the way back to his house, certainly, is unnatural conduct of a witness who is none other than the father of the deceased. Therefore, his presence at the spot is highly doubtful and therefore, we have no hesitation in holding that he did not witness the occurrence but has been set-up as a prosecution witness by the investigating agency.

25. As regards PW-8/Manpreet Kaur, we wish to highlight that her statement during the course of investigation under Section 161 Cr.P.C. was recorded only on 30.09.2003 i.e. seven days after the occurrence. She has admitted in her cross-examination that she was tutored to make the statement by her uncle-Balbir Singh and grand-father/Sucha Singh-complainant with whom she was residing. Therefore, her deposition has rightly been disbelieved by the Trial Court and we are also of the same opinion that her testimony cannot be accepted.

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26. As regards the place of occurrence, a map attached to the inquest report categorically shows that the body was lying in quarter No.2233 occupied by Sohan Singh (deceased). Quarter No.2232 is to the South and is occupied by Balwinder Singh, to the North, firstly, quarter No.2234 in the possession of Bishan Dass and further up is quarter No.2235 in the occupation of Gurmukh Singh. In the scaled site plan Ex.PF, the dead body is shown to be in quarter No.2233 in the possession of Sohan Singh-deceased. To the South is quarter No.2232 in the possession of Balwinder Singh and to the North, quarter No.2234 is in the possession of Bishan Dass. PW-9/Gurmit Singh Inspector/SHO has admitted categorically in his cross-examination that the body was found in quarter No.2233 which was in the possession of Sohan Singh and dead body was not shown in the quarter No.2235 of Gurmukh Singh. At the time, when the charges under Sections 302 read with Section 34 IPC were framed against Kulwant Kaur, she admitted that she was residing in quarter No.2233. Various recoveries such as a leather purse containing photographs, a driving licence, two photographs purportedly of Kulwant Kaur and Gurdev Singh @ Mangi, etc. have been shown to be effected from quarter No.2233 itself. Thus, there is absolutely no doubt that Sohan Singh alongwith Kulwant Kaur and his children were residing in this quarter No.2233 where he was done to death.



27. As regards admissibility of photographs as evidence, in '***State of Gujarat versus Bharat alias Bhupendra 1991 CriLJ 978***', the Gujarat High Court held as under:-

13. The learned Additional Sessions Judge has given too much importance to photographs of place of incident, Exhs. 15, 16, 18, 19 and 20. These photographs do not show any electric pole in the street. It surpasses one's imagination as to how these photographs could have been produced in the cross-examination of prosecution witnesses. In cross-examination of witness Rasiklal, Circle Inspector, two photographs have been produced. Other three photographs have been produced in cross-examination of Nautam Bhai (Exh. 17). The witnesses have not taken the photographs. No one knows when the photographs have been taken. It is also not disclosed as to from which angle and from which place the photographs have been taken. Negatives of the photographs are not produced on record. As far as the place of incident or for that matter any place of which demarcations and delineations are required to be noted, photographs, even if duly proved would not be good piece of evidence. In the case of United States Shipping Board v. The Ship "St. Albans" 0 AIR 1931 Privy Council 189 it is inter alia observed that it is necessary to limit carefully the uses for which, upon mere production of them, photographs can be accepted as means of proof of matters of fact. A photographic picture cannot be relied upon as proof in itself of the dimensions of the depicted object or objects, and cannot be made properly available to establish the relative proportions of such objects except by evidence of personal knowledge or scientific experience to demonstrate accurately the facts sought



to be established. In this view of the matter reliance, placed by the learned Additional Sessions Judge on photographs Exhs. 15, 16, 18, 19 and 20 and particularly Exhs. 15 and 16 for holding that street No. 4 in Vama Vadi cannot be the scene of offence is not sustainable. On the contrary these photographs ought not to have been admitted in evidence without examining the person who took the photographs and the negatives of the same being produced on record. Even when rightly admitted in evidence, their evidentiary value is almost nil. This evidence of photographs, ordinarily cannot be used to contradict the eye-witness account and the evidence of panch as well as investigating officer.

In '**Joyita Saha versus Rajesh Kumar Pandey 2000(2) LJR 768**', the Calcutta High Court held as under:-

39. However, if we go through the evidence of DW-2 namely, the priest who had performed the marriage, we will find that D W-2 had made categorical statements that all the ceremonies performed for the marriage of a Hindu were not performed, specially Saptapadi was not performed and so also Kanyadan. He further stated that he had rushed through the marriage ceremony on the advice of the respondent and the Exhibit 'D' issued by him was issued at the instance of the respondent and his father. As we have already observed that since the DW-2 was not declared as a hostile witness, we find no reason to disbelieve his statement. Mainly upon relying the photographs being Exhibit 'E' series, whose negatives were not on record, the Court below should not have held that the alleged marriage between the appellant and the respondent was performed



according to the Vedic rites and customs, moreso, when such photographs were inadmissible in evidence.

in '***Arun Balakrishnan Iyer and Anothers versus M/s Soni Hospital and Others 2004(1) CivCC 183***', the Madras High Court held as under:-

27. P.W.3 in his evidence has stated that the pad was found rolled "inside" the intestine. Also P.W.3 has stated that he had taken the photograph of the pad removed from the intestine of the second plaintiff. But, the photograph and the pad which had the inscription "Soni Hospital" cannot be taken as evidence without the negative being produced; hence, it is inadmissible in evidence. The Privy Council in the case of United States Shipping Board v. Ship St. Abbans, AIR 1931 Privy Council 189, has held that photograph by itself is not proof of dimensions and relative proportions of the object depicted. The counsel for defendants also relied upon it decision of Gujarat High Court reported in 1991 Cri LJ 978 that photograph is inadmissible when the person who took the photograph was not examined and when the negatives are not produced. This Court has also held so in a number of cases. Hence, the photograph of the abdominal pad with inscription of Soni Hospital does not help the plaintiffs, as the photographs inadmissible in evidence without the negatives.

28. Coming back to the facts of the present case, the prosecution has sought to establish motive not only from the deposition of the complainant-Sucha Singh (PW-7) but also from two photographs

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purportedly recovered from the place of occurrence showing Kulwant Kaur in close proximity of Gurdev Singh @ Mangi. The said photographs have been placed on record as Ex.P-15 and P-16. As regards evidence of photographs, it has been categorically held that in the absence of the photographer who has taken the photographs and the negatives of the photographs being brought on record, the said photographs are inadmissible in evidence. Therefore, the recovery of these photographs does not further the case of the prosecution.

29. Undoubtedly, as has been found by us, the occurrence took place in quarter No.2233 which was occupied by the deceased-Sohan Singh, his wife-Kulwant Kaur (accused-appellant No.1) and their children including PW-8/Manpreet Kaur. The deceased died a homicidal death and from the spot, amongst other articles, a piece of nylon rope measuring 2½ feet in length was recovered alongwith a green coloured *chunni*. As per the prosecution case, they were used to strangle the deceased. However, the stand taken by Kulwant Kaur in her statement under Section 313 Cr.P.C. is that Sohan Singh (deceased) went out of the house in the evening and did not return in the morning. His body was found in quarter No.2235 belonging to Gurmukh Singh. This defence furnished by the accused-Kulwant Kaur cannot be accepted in view of our categoric finding on the basis of the evidence on record that the occurrence took place in quarter No.2233. In this situation, it becomes imperative for the accused-Kulwant



Kaur to explain how the deceased was done to death in a house of which she alongwith the accused was a resident.

30. Section 106 of the Evidence Act states that the burden of proving a fact especially within the knowledge of a person is upon him.

Section 106 of the Evidence Act reads as under:-

106. Burden of proving fact especially within knowledge--

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling in a railway without a ticket. The burden of proving that he had a ticket is on him. .

31. In '***Anees versus The State Govt. of NCT 2024(2) RCR(Criminal) 856***', one Anees had allegedly committed the murder of his wife in their home. Their minor daughter-Shaheena was the sole eye-witness to the occurrence. However, Shaheena did not support the prosecution case and was declared a hostile witness. Despite the said fact, the Trial Court convicted the accused. An appeal was filed before the High Court, Delhi which came to be dismissed. The convicted accused approached the Hon'ble Supreme Court and in the context of Section 106 of the Evidence Act, the Hon'ble Supreme Court held as under:-

36. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any



person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

37. In Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404, this Court while considering the word "especially" employed in Section 106 of the Evidence Act speaking through Vivian Bose, J., observed as under:

"11. ... The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.

It is evident that that cannot be the intention & the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. The King, 1936 PC 169 (AIR V 23) (A) and Seneviratne v. R. 1936-3 All ER 36 AT P. 49 (B)."



38. *The aforesaid decision of Shambhu Nath (supra) has been referred to and relied upon in Nagendra Sah v. State of Bihar, (2021) 10 SCC 725, wherein this Court observed as under:*

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

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

(Emphasis supplied)

39. *In Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra, (2012) 10 SCC 373, this Court observed as under:*

"23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to



the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in State of W.B. v. Mir Mohammad Omar and Ors. [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516] : (SCC p. 393, para 38)

"38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambhu Nath Mehra v. The State of Ajmer [AIR 1956 SC 404 : 1956 Cri LJ 794] the learned Judge has stated the legal principle thus :

`11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."

(Emphasis supplied)

40. In Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681, this Court was considering a similar case of homicidal death in the confines of the house. The following



observations made therein are considered relevant in the facts of the present case:

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity 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 the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315 : (1944) 2 All ER 13 (HL)] - quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135].) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

"(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

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.

xxx xxx xxx

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. ..."

(Emphasis supplied)

41. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in the case of State of W.B. v. Mir Mohammad Omar and Ors., (2000) 8 SCC 382. In this case, the assailants forcibly dragged the deceased from the house where he was taking shelter on account of the fear of the accused, and took him away at about 2:30 in the night. The next day in the morning, his mangled body was found lying in the hospital. The trial court convicted the accused under Section 364, read with Section 34 of the IPC, and sentenced them to ten years rigorous imprisonment. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for the charge of murder. The accused had not given any explanation as to what happened to the deceased after he was abducted by them. The Sessions Judge, after referring to the law on circumstantial evidence, had observed that there was a missing link in the



chain of evidence after the deceased was last seen together with the accused persons, and the discovery of the dead body in the hospital, and concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act, and laid down the following principles in paras 31 to 34:

"31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a recognized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him



out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody."

(Emphasis supplied)

42. Applying the aforesaid principles, this Court while maintaining the conviction under Section 364 read with Section 34 of the IPC, reversed the order of acquittal under Section 302 read with Section 34 of the IPC, and convicted the accused under the said provision and sentenced them to imprisonment for life.

43. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

44. Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the



accused and it does not throw the burden on the accused to show that no crime was committed. 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. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

45. Section 106 of the Evidence Act obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge, which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:

"All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence."

(Emphasis supplied)

46. To recapitulate the foregoing : What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is



the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is, therefore, for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams-Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion-para 527 negative averments and para 528 - "require affirmative counter-evidence" at page 438 and foil, of Kenny's outlines of Criminal Law, 17th Edn. 1958.

47. But Section 106 of the Evidence Act has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place. The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then under illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary.



48. *A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with counter-vailing evidence, if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom. Although not legally required to produce evidence on his own behalf, the accused may, therefore, as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution [See: Balvir Singh v. State of Uttarakhand, 2023 SCC OnLine 1261]*

ii. *What is "prima facie case" (foundational facts) in the context of Section 106 of the Evidence Act?*

49. *The Latin expression prima facie means "at first sight", "at first view", or "based on first impression". According to*



Webster's Third International Dictionary (1961 Edn.), "prima facie case" means a case established by "prima facie evidence" which in turn means "evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted". In both civil and criminal law, the term is used to denote that, upon initial examination, a legal claim has sufficient evidence to proceed to trial or judgment. In most legal proceedings, one party (typically, the plaintiff or the prosecutor) has a burden of proof, which requires them to present prima facie evidence for each element of the case or charges against the defendant. If they cannot present prima facie evidence, the initial claim may be dismissed without any need for a response by other parties.

50. Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding guilt of the accused.

51. The presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved.

52. To explain what constitutes a prima facie case to make Section 106 of the Evidence Act applicable, we should refer to the decision of this Court in Mir Mohammad (supra), wherein this Court has observed in paras 36 and 37 respectively as under:

"36. In this context we may profitably utilize the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."



37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."

(Emphasis supplied)

53. *We should also look into the decision of this Court in the case of Ram Gulam Chaudhary & Ors. v. State of Bihar, (2001) 8 SCC 311, wherein this Court made the following observations in paragraph 24 as under:*

"24. Even otherwise, in our view, this is a case where Section 106 of the Evidence Act would apply. Krishnanand Chaudhary was brutally assaulted and then a chhura-blow was given on the chest. Thus chhura-blow was given after Bijoy Chaudhary had said "he is still alive and should be killed". The appellants then carried away the body. What happened thereafter to Krishnanand Chaudhary is especially within the knowledge of the appellants. The appellants have given no explanation as to what they did after they took away the body. Krishnanand Chaudhary has not been since seen alive. In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a



different inference. We, therefore, see no substance in this submission of Mr. Mishra."

(Emphasis supplied)

54. Cases are frequently coming before the courts where the husband, due to strained marital relations and doubt as regards the character, has gone to the extent of killing his wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, like in the case at hand, even if he is a witness of the crime, would come forward to depose against another family member.

55. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at a time and in the circumstances of his choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused. It is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book. In the case of Trimukh Maroti Kirkan (supra), this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. The Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.



56. *We are of the view that the following foundational facts, which were duly proved, justified the courts below in invoking the principles enshrined under Section 106 of the Evidence Act:*

- a) The offence took place inside the four walls of the house in which the appellant, deceased and their 5-year-old daughter were living. The incident occurred in the early morning hours between 3.30 am and 4.00 am.*
- b) When the Investigating Officer reached the house of the appellant, he found the deceased lying in a pool of blood. The appellant was also present at his house.*
- c) The defence put forward by the appellant that two unidentified persons entered the house and inflicted injuries on the deceased and also on his body is found to be false.*
- d) The clothes worn by the appellant at the time of the incident were collected by the Investigating Officer. The clothes had blood stains. According to the Forensic Science Laboratory report, the blood stains on the clothes of the appellant matched with the blood group of the deceased i.e., AB+*
- e) The conduct of the appellant in leading the Investigating Officer and others to a drain nearby his house and the discovery of the knife from the drain is a relevant fact under Section 8 of the Evidence Act. In other words, the evidence of the circumstance simpliciter that the appellant pointed out to the Investigating Officer the place where he threw away the weapon of offence i.e., knife would be admissible as 'conduct' under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act.*

32. In the instant case, certain foundational facts have been established beyond doubt. Firstly, the occurrence has taken place inside the four walls of the house in which the deceased-Sohan Singh, the accused-



nylon rope and *chunni* used in the occurrence were recovered from the same house. Thirdly, the defence put forth by the accused-Kulwant Kaur in her statement under Section 313 Cr.P.C. is totally incorrect in view of the evidence led and the finding recorded by us that the occurrence had indeed taken place in quarter No.2233 of which all were residents. Therefore, it was incumbent upon the accused-appellant No.1/Kulwant Kaur to have explained how the deceased had died an unnatural homicidal death in the house. She has been unable to offer a plausible explanation and therefore, an adverse inference is to be drawn against her.

33. In view of the aforementioned discussion, we find that as PW-7/Sucha Singh-complainant and PW-8/Manpreet Kaur are both witnesses whose testimonies cannot be believed, there is absolutely no evidence inculcating accused-appellants No.2 and 3, namely, Gurdev Singh @ Mangi and Nathu Ram @ Laddi.

However, as regards accused-appellant No.1/Kulwant Kaur, she being the wife of the deceased and a resident of the same house where Sohan Singh died a homicidal death was required to explain his unnatural death which she has been unable to do.

34. Therefore, we accept the appeal qua accused-appellants No.2 and 3, namely, Gurdev Singh @ Mangi and Nathu Ram @ Laddi and they are acquitted of the charges framed against them. However, we dismiss the appeal qua accused-appellant No.1/Kulwant Kaur. She is directed to

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surrender before the Jail Authorities concerned forthwith to serve out her remaining sentence.

35. The present appeal is disposed of in the above terms alongwith the application pending, if any.

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

11.02.2025
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No