



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 296 of 2017

Reserved on: 01.07.2019

Decided on: 02.09.2019

Devi Ram

.....Appellant

Versus

State of H.P.

.....Respondent

Coram

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

The Hon'ble Mrs. Justice Jyotsna Rewal Dua, Judge

Whether approved for reporting?¹ Yes.

For the appellant:

Mr. Lalit K. Sharma, Advocate.

For the respondent:

**Mr. Narinder Guleria, Addl. A.G
and Mr. J.S. Guleria, Dy. A.G.**

Dharam Chand Chaudhary, Judge

The appellant (hereinafter referred to as the 'accused') herein is a convict. He has been convicted by learned Additional Sessions Judge-I, Mandi, District Mandi, H.P. for the commission of offence punishable under Sections 302 and 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay fine of ₹10,000/- for the commission of offence punishable under Section 302 IPC and for a period of one year and to pay fine of ₹5,000/- for the commission of offence punishable under Section 201 IPC vide judgment dated 30.11.2016 passed in Sessions Trial No. 23/2013, under challenge in the present appeal.

2. PW-5 Maghu Ram is the father of the accused, whereas, complainant Narainu (PW-1) his brother. On 29.04.2013, there

¹Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

was marriage of daughter of one Dhani Ram (grand daughter of PW-11 Bhagat Ram) at village Khushla. Accused accompanied by his wife Manjeet Kaur and the complainant accompanied by his wife had gone to participate in the marriage. As per statement Ext.PW-1/A of PW-1 recorded under Section 154 Cr.P.C, the accused and deceased had their food and left the house of Dhani Ram around 6.45 p.m. The complainant left the house of said Dhani Ram at about 8.30 p.m. On the way, he heard criers of his brother, the accused who was asking '**Niche Aao, Niche Aao**'(come down). Accordingly he went to '*nallah*' and found his brother lying there on stone. On asking as to how he came there, the accused replied that he had slipped and fallen down. On inquiry as to where is his wife (deceased), he replied that she had gone to house of her parents. On asking this question repeatedly on 10-12 occasions, replied that she had gone to her parent's house. The complainant (PW-1) then raised alarm from the '*nallah*' itself. On this, his father Maghu and nephew Dev Raj arrived there. In their presence also, the accused was asked about his wife, his reply again was that she had gone to the house of her parents. They lifted the accused from that place and brought to the path, there Hukam Chand, Gulab Chand, Tara Chand and Leeladhar met them. Hukam Chand (PW-2) inquired from the accused strictly as to where was his wife. On this, he told that she had gone to her house. The complainant retorted at him and told

that she is not in the house. This allegedly raised suspicion in their mind that the accused may have killed her, therefore, PW-1 accompanied by Tara Chand and Leeladhar went inside the jungle and after searching the deceased for about 30-45 minutes, they could trace her out, who was lying in an injured condition in the jungle. There were grievous injuries on her head and forehead and she was lying in unconscious condition. They picked up her body and brought to the road. The deceased and the accused both were taken by them thereafter to civil hospital at Sundernagar for treatment. In the hospital, the deceased was declared dead by the doctor on duty. Since the accused has told lie about his wife and he was under fear as well perturbed, therefore, the complainant has suspected that it is he who had killed her.

3. The statement Ext.PW-1/A of complainant was recorded by Inspector Binny Minhas (PW-14), who on receipt of information Ext.PW-8/A had rushed to Civil Hospital, Sundernagar where the deceased was brought along with the accused. PW-1 Narainu and others were also present there. PW-14 made endorsement Ext.PW-14/A on the statement Ext.PW-1/A and it was sent to Police Station BSL Colony, Sundernagar through Constable Lal Singh. On the basis thereof, FIR Ext.PW-12/A was registered in the police station.

4. On receipt of file from the police station inquiry from the accused as to how he received injuries on his person and how the

death of his wife occurred, he told that they had fallen into gorge through 'Dhank' (hill slope). When PW-14 Inspected the dead body, he allegedly found she having sustained the injuries on her head and forehead caused with sharp edged weapon. She allegedly had not sustained any other injuries on her body nor her clothes were soiled. He clicked the photographs Ext.PP-1 to Ext.PP-3 of the dead body and recorded the statements of Hukam Chand (PW-2) Ext.PS-1 and Dev Raj Ext.PS-2 under Section 161 Cr.P.C. It is thereafter he prepared the inquest papers. The post-mortem was conducted by the Medical Officer, Civil Hospital, Sundernagar. The post-mortem report Ext.PW-6/B was collected and the accused arrested. The spot inspection was conducted on the identification thereof by PW-1 Narainu and the spot map Ext.PW-14/D prepared. Blood stained soil and leaves (in the shape of powder) were lifted from the spot and taken into possession vide seizure memo Ext.PW-1/C from the spot itself. Blood stained leaves of 'Baan' tree were also lifted and taken into possession vide seizure memo Ext.PW-1/D in the presence of Narainu (PW-1) and Dev Raj. One gents wrist watch and broken pen lying on the spot were also taken into possession. Inside the pen, a paper allegedly containing writing "Dev love Ashu" was found written. The statement of Narainu and supplementary statement of Dev Raj Ext.PS-3 and Ext.PS-4 were also recorded. On the disclosure statement Ext.PW-7/A allegedly made by the accused on 2nd May,

2013 while in custody, the weapon of offence axe, Ext. P-8 was recovered and taken into possession vide memo Ext.PW-3/A in presence of Jitender Kumar and Durga Dass. The sketch of axe Ext.PW-14/G was prepared. The accused allegedly has identified the place as per the identification memo Ext.PW-3/C and a cellphone black in colour LAVA, KKT 345 make lying inside the dry leaves of 'Baan' having one sim of idea, whereas, other of Reliance belonging to the deceased was taken in possession vide memo Ext.PW-3/B. The rucksack of accused he was carrying when went to attend the marriage with the deceased was also taken in possession vide memo Ext.PW-3/B. PW-5 Maghu Ram allegedly handed over one jean and shirt of the accused which were worn by him on the day of occurrence. The same were also taken in possession vide memo Ext.PW-3/E. The spot map of the place of recovery of axe, Ext.PW-14/H was also prepared. The statement of Maghu Ram (PW-5) Ext.PS-5 was recorded as per his version. The statements made by Jitender Kumar and Durga Dass, HC Chaman Lal and HC Inder Dev were also recorded as per their version.

5. On 9.5.2013, PW-14 recorded the statements of Bhagat Ram, Chet Ram and Gulab Chand as per their version. On 3.6.2013, he recorded the statements of Leeladhar and Tara Chand. On 14.7.2013, the report Ext. P-X was received from the Forensic Science Laboratory and on 16.7.2013, the weapon of offence axe was produced before Dr. Vivek Modgil and his opinion

on the post-mortem Ext.PW-6/B was obtained. The reports Ext.P-Y and Ext.P-Z were also received from the Forensic Science Laboratory. The photographs Ext.PP-4 and Ext.PP-5 were taken at the time of recovery of the weapon of offence, whereas, the photograph Ext.PP-6 is taken at the time of recovery of the cellphone. On completion of investigation, PW-14 has prepared the challan and filed the same in the Court.

6. Learned trial Court on consideration of the final report filed by the investigating agency and also the documents annexed therewith has found a *prima-facie* case for the commission of the offence punishable under Section 302 and 201 IPC made out against the accused. Therefore, charge against him was accordingly framed. He, however, pleaded not guilty to the charge and claimed trial. The prosecution, in turn, has examined 14 witnesses in all and placed reliance on the documentary evidence referred to hereinabove.

7. The material prosecution witnesses are Narainu (PW-1), the complainant, Hukam Chand (PW-2), a witness of the spot, Chet Ram (PW-4) and Maghu Ram (PW-5). They have been associated and examined by the prosecution to prove its case to the extent that the accused and deceased went to the house of Dhani Ram for attending the marriage of his daughter there. According to PW-1, they left the house of Dhani Ram at about 7.00 p.m, whereas, he came back therefrom at about 8.45 p.m. On way back, he

heard cries of his brother, the accused. He went to the 'nallah' and found the accused lying on a stone. On inquiry, the accused told that he had fallen from the path. When inquired from him about his wife, the accused told that she had gone to her parent's house. He has also supported the prosecution case so as to he called his father Maghu Ram (PW-5) and nephew Dev Raj and they all lifted the accused from the place where he was lying and brought him to the road. Thereafter, Hukam Chand, Tara Chand, Leeladhar also came there. Hukam Chand (PW-2) has not supported the prosecution case and turned hostile. Chet Ram (PW-4) has been associated to support the prosecution case that the accused not only slapped his wife, the deceased but also dragged her in the courtyard of Dhani Ram, when they had gone to attend the marriage. Maghu Ram (PW-5), the father of the accused has also not supported the prosecution case so as to it is the accused who killed his wife. Bhagat Ram (PW-11), is the grand-father of bride Nitu Devi. According to him, the accused and his wife also attended the marriage of his grand-daughter and returned to their home at about 5.30-6.00 p.m.

8. The remaining prosecution witnesses are formal as Durga Dass (PW-3) is a witness to seizure memos Ext.PW-3/A and Ext.PW-3/B, whereby axe Ext.P-8 and Pithu Ext.P-10 were taken in possession by the police. The cellphone Ext.P-12 was also stated to be taken in possession in his presence vide recovery memo

Ext.PW-3/D, whereas jean pant Ext.P-14 and shirt Ext.P-15 vide recovery memo Ext.PW-3/E. PW-6 is Dr. Vivek Modgil of Civil Hospital, Sundernagar. He conducted the post-mortem of the dead body and submitted report Ext.PW-6/B. PW-7 HC Chaman Lal posted in police station BSL Colony, Sundernagar at the relevant time has witnessed the disclosure statement Ext.PW-7/A, whereby axe Ext.P-8 was got recovered by the accused. He also discharged the duties of MHC and the parcel containing axe Ext.P-8 was deposited with him. He made the entries in the malkhana register. PW-8 HC Nand Lal had entered rapat Ext.PW-8/A in the daily dairy on receipt of information from the hospital. PW-9 Constable Chet Ram had taken the case property vide RC Ext.PW-9/A and deposited the same in R.F.S.L. Mandi. PW-10 Dharam Chand is Patwari concerned who on demand had supplied the copy of jamabandi Ext.PW-10/A and tatima Ext.PW-10/B to the police. PW-12 ASI Trilok Chand had made endorsement Ext.PW-12/B on the back side of statement Ext.PW-1/A. He also recorded the statement of Dharam Chand and obtained the copy of jamabandi Ext.PW-10/A and Aks tatima Ext.PW-10/B from this witness. PW-13 remained posted as MHC Police Station, BSL Colony, Sundernagar. He has stated about the deposit of case property before him and sending the same to Forensic Science Laboratory for examination. PW-14 is the Investigating Officer. He tells us the manner in which the investigation was conducted by him in this case.

9. On the other hand, the accused in his statement recorded under Section 313 Cr.P.C has denied the entire prosecution case either for want of knowledge or being incorrect. According to him, he has been implicated in a false case as his wife deceased Manjeet Kaur died due to fall from the hill. He, however, not opted for producing any evidence in his defence.

10. Learned trial Judge on appreciation of the oral as well as documentary evidence available on record has convicted and sentenced the accused vide judgment under challenge as pointed out at the very out set.

11. The legality and validity of the impugned judgment has been questioned on the grounds *inter-alia* that the evidence available on record has not been appreciated in its right perspective and rather learned trial Court has based its findings on conjectures, surmises and hypothesis. The present, according to appellant-convict is a case where no iota of evidence is there to connect him with the commission of offence. Therefore, the conclusion drawn by learned trial Judge that he has committed the offence punishable under Section 302 and 201 IPC are not trustworthy. The material prosecution witnesses have made inconsistent statements and contradicted each other. The contradictions and improvements in their version goes to the very root of the case. The findings that PWs 1, 2, 4 and 5 have supported the prosecution case are stated to be contrary to the

record. PW-1, the complainant while in the witness box has denied any statement Ext.PW-1/A he made to the police, therefore, the very genesis of the occurrence and also registration of FIR Ext.PW-12/A on the basis thereof, loses its significance. It has come in the prosecution evidence itself that the accused was not only under fear but also perturbed because they both fallen into gorge. The prosecution evidence also reveals that they both were living happily. The motive that the accused had relations with another lady Ashu is not at all proved as the prosecution has failed to produce any evidence in this regard. Even the I.O as per his version in cross-examination has not opted for associating said Ashu in the investigation of the case. In the absence of eye witness count to the occurrence, the prosecution has placed reliance on the circumstantial evidence which is not worthy of credence on account of missing links nor sufficient to arrive at a conclusion that it is the accused alone who had killed his wife, the deceased. The impugned judgment, as such, has been sought to be quashed and set aside.

12. Dr. Lalit K. Sharma, learned counsel representing the appellant-convict while drawing our attention to the evidence available on record has vehemently argued that the impugned judgment is not legally sustainable because the prosecution has failed to prove its case against the accused beyond all reasonable doubt. The prosecution story that the accused has killed his wife,

the deceased on account of his extra marital relations is not at all proved. On the other hand, the plea of the accused he raised in his defence that his wife slipped away from the path leading through hill top and fallen into gorge and died thereby, according to Mr. Sharma finds support even from the prosecution evidence itself. When the statement Ext.PW-1/A is not proved to be made by the complainant PW-1, therefore, the very genesis of the occurrence is stated to be doubtful. The prosecution witnesses have clarified while in the witness box that on seeing the accused under fear and also perturbed, they suspected that it is he who may have killed his wife. The alleged recovery of axe Ext.P-8 is also of no help to the prosecution case. According to Mr. Sharma, the medical evidence is also not suggestive of that fatal injury has been caused on the forehead of deceased with axe Ext.P-8 alone as the doctor has not ruled-out the possibility of such injury likely to be caused by way of fall through a 'Dhank' on stone.

13. On the other hand, Mr. Narinder Guleria, learned Additional Advocate General has pointed out from the testimony of PW-4 Chet Ram that the accused slapped the deceased in the house of Dhani Ram and also dragged her there in the courtyard. According to him, this alone is sufficient to believe that it is he who had murdered her. Also that, his contradictory answers to the query of PW-1 Narainu and PW-2 Hukam Chand and whereabouts of his wife that "she had gone to the house of her parents" and "she had

gone to her house” irrespective of she was lying unconscious in the ‘*nallah*’ lead to the only conclusion that it is he alone who had killed her and by making contradictory statements qua her whereabouts, tried to conceal this fact from the persons including the complainant present there. It is also pointed out that the extra marital relations of the accused with another lady Ashu stand established, therefore, he, according to learned Additional Advocate General, had the motive to kill his wife, the deceased.

14. We have carefully analyzed the rival submissions and also the evidence available on record.

15. The present is a case where no eye witness count of the occurrence has come on record as the commission of alleged offence has not been witnessed by anyone. The present, therefore, is a case hinges upon the circumstantial evidence. In a case of this nature, the facts and circumstances of the case should be conclusive in nature and consistent only with the hypothesis of the guilt of the accused and not explainable on any other hypothesis except that the accused is guilty. Therefore, an onerous duty is casted on this Court to find out the truth by separating grain from the chaff. In other words, it has to be determined that the facts of the case and the evidence available on record constitute the commission of an offence punishable under Section 302 IPC against the accused or not. However, before coming to answer this poser, it is desirable to take note of

the legal provisions constituting an offence punishable under Section 302 IPC. A reference in this regard can be made to the provisions contained under Section 300 IPC. As per the Section *ibid*, culpable homicide is murder firstly if the offender is found to have acted with an intention to cause death or secondly with an intention of causing such bodily injury knowing fully well that the same is likely to cause death of someone or thirdly intention of causing bodily injury to any person and such injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or if it is known to such person that the act done is imminently so dangerous that the same in all probability shall cause death or such bodily injury as is likely to cause death.

16. Culpable homicide has been defined under Section 299 IPC. Whoever causes death by way of an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death can be said to have committed the offence of culpable homicide. Culpable homicide is murder if the act by which death is caused is done with the intention of causing death. Expression “intent” and “knowledge” postulate the existence of a positive mental attitude which is of different degree. We are drawing support in this regard from the judgment of Apex Court in **Jagriti Devi vs. State of Himachal Pradesh, AIR 2009 SC 2869.**

17. The ingredients of culpable homicide amounting to murder, therefore, are: (i) causing death intentionally and (ii) causing bodily injury which is likely to cause death. In case the accused had motive to cause death of deceased, the eye witness count of the occurrence may not be required, however, where the motive is missing, the prosecution is required to prove its case with the help of the testimony of eye witnesses.

18. The present being a case of circumstantial evidence, the Court seized of the matter has to appreciate such evidence with all care and circumspection and rely upon only if establishes the guilt of the accused alone and rule out all possibilities leading to the presumption of innocence of the accused. The law is no more res integra as support can be drawn from the judgment of a Division Bench of this Court in ***Sulender vs. State of H.P., Latest HLJ 2014 (HP) 550.*** The relevant extract of this judgment reads as follows:

[21] It is well settled that in a case, which hinges on circumstantial evidence, circumstances on record must establish the guilt of the accused alone and rule out the probabilities leading to presumption of his innocence. The law is no more res integra, because the Hon'ble Apex Court in [Hanumant Govind Nargundkar Vs. State of M.P.](#), 1952 AIR(SC) 343 has laid down the following principles:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the

one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

[22] The five golden principles, discussed and laid down, again by the Hon’ble Apex Court in [Sharad Birdhichand Sarda Vs. State of Maharashtra](#), 1984 4 SCC 116, are as follows:

(i) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established,

(ii) 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,

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

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

(v) 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.”

19. Similar is the ratio of the judgment rendered again by this Bench in ***State of Himachal Pradesh vs. Rayia Urav @ Ajay***, ***ILR 2016 (5) (HP) 213***. The relevant text of this judgment also reads as follows:

“[10] As noticed supra, there is no eye-witness of the occurrence and as such, the present case hinges upon the circumstantial evidence. In such like cases, as per the settled proposition of law, the chain of circumstances appearing on record should be complete in all respects so as to lead to the only conclusion that it is accused alone who has committed the

offence. The conditions necessary in order to enable the court to record the findings of conviction against an offender on the basis of circumstantial evidence have been detailed in a judgment of this Court in [Devinder Singh V. State of H.P.](#), 1990 1 Shim LC 82 which reads as under:-

“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 guilt.

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.

[11] It has also been held by the Hon'ble Apex Court in [Akhilesh Halam V. State of Bihar](#), 1995 Supp3 SCC 357 that the prosecution is not only required to prove each and every circumstance as relied upon against the accused, but also that the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The relevant portion of this judgment is reproduced here-as-under:-

“It may be stated that the standard of proof required to convict a person on circumstantial evidence is now settled by a series of pronouncements of this Court. According to the standard enunciated by this court the circumstances relied upon by the prosecution in support of the case must not only be fully established but the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt of an accused is to be inferred, should be conclusive nature and consistent only with the hypothesis of the

guilt of the accused and the same should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances cumulatively taken together lead to the only irresistible conclusion that the accused is the perpetrator of the crime.....”

20. This Court has again held in **State of Himachal Pradesh Vs. Sunil Kumar, Cr. Appeal No. 326 of 2011 decided on 15.6.2017** as under:

“13. It is more than settled that in case of circumstantial evidence, the circumstances from which inference as to the guilt of the accused is drawn, have to be proved beyond reasonable doubt and there be a complete chain of evidence consistent only that the hypothesis of guilt of the accused and totally inconsistent with his innocence and in such a case if the evidence relied upon is capable of two inferences then one which is in favour of the accused must be accepted. It is clearly settled that when a case rests on circumstantial evidence such evidence must satisfy three tests:

.The circumstance from which an inference of guilt is sought to be drawn must cogently and firmly established.

.Those circumstances should be of a definite tendency un-erringly pointing out towards the guilt of the accused.

.The circumstances taken cumulatively, should form a complete chain so that to come to the conclusion that the crime was committed by the accused.

14. Equally well settled is the proposition that where the entire prosecution case hinges on circumstantial evidence the Court should adopt cautious approach for basing the conviction on circumstantial evidence and unless the prosecution evidence point irresistible to the guilt of the accused, it would not be sound and safe to base the conviction of accused person.

15. In case of circumstantial evidence, each circumstances must be proved beyond reasonable doubt by independent evidence and the circumstances so proved, must form a complete chain without giving room to any other hypothesis and should be consistent that only the guilt of the accused (See: Lakhbir Singh vs. State of Punjab, 1994 Suppl. (1) SCC 173).”

other hypothesis and should be consistent that only the guilt of the accused (See: Lakhbir Singh vs. State of Punjab, 1994 Suppl. (1) SCC 173)."

21. The Hon'ble Supreme Court in **Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 Supreme Court 1622**, has held as under:

"150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete than a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

... ..

158. 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 point to the guilt of the accused with reasonable definiteness, and*
- (3) the circumstance is in proximity to the time and situation."*

22. The Apex Court again in **Kanhaiya Lal vs. State of Rajasthan, (2014) 4 SCC 715** has held as to how and under what circumstances the commission of an offence can be inferred

on the basis of circumstantial evidence and last seen theory. This judgment reads as follows:-

"8. The prosecution case is that the appellant-accused Kanhaiya Lal committed the murder of Kala by strangulation and threw the body in the well. Nobody witnessed the occurrence and the case rests on circumstantial evidence. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."

23. Now, if adverting to the prosecution case, admittedly, the deceased was legally wedded wife of the accused. It is established from the prosecution evidence that on 29.4.2013, the accused and deceased had gone to attend the marriage of the daughter of one Dhani Ram, grand-daughter of PW-11 Bhagat Ram at village Khushla. They had their meal in the marriage and as per statement under Section 154 Cr.P.C Ext.PW-1/A, returned to their house at 6.45 p.m, whereas, as per version of complainant PW-1 at

about 7.00 p.m. and that of PW-11 Bhagat Ram at about 5.30-6.00 p.m. Irrespective of the contradiction qua timing of their return, the fact remains that they returned to their house together because the accused has also not disputed this aspect of the matter, as is apparent from the trend of cross-examination of the prosecution witnesses conducted by learned defence counsel. The complainant had also gone to attend the marriage and he came back after the accused and deceased left the house of Dhani Ram. As per his version, on the way to the house, he heard cries of his brother, the accused who was asking '**Niche Aao, Niche Aao**' (come down). On recognizing that his brother, the accused is crying, he went down and noticed the accused lying on a stone in the nallah. His wife, as per prosecution case itself, was also lying in an unconscious condition at a distance of 10 feet from the place where the accused was lying in an injured condition on the stone.

24. The further case of the prosecution that on inquiry by PW-5 from the accused that where was his wife and the reply that she had gone to her parent's house and thereafter that she had gone to her house and the accused allegedly was not frightened but perturbed also, therefore, suspected to have killed his wife does not find support from the prosecution case. PW-5 has supported the prosecution case only up to the stage of he found the accused lying in an injured condition on a stone in the gorge and on inquiry about his wife, he told that she had gone to her parent's house

and also that he called his father Maghu Ram (PW-5) and nephew Dev Raj to the spot. No doubt, he has also supported the prosecution case that sometime the accused was telling that his wife had gone to her parent's house and sometime that she had gone to her house, however, denied that it is due to such conduct of the accused, they apprehended he having killed his wife. He had denied any such statement made to the police. The prosecution has not opted for cross-examining him qua this part of its case. Therefore, its case that in view of the contradictory statements made by the accused, PW-1 believed that he had killed his wife stand falsified. Though, he admitted the statement Ext.PW-1/A having been made by him before the police and also identified his signature thereon, however, when cross-examined stated that he had reported to the police that his brother and his wife had fallen down the hill. It has also come in his cross-examination that the accused was living with his wife, the deceased happily. The forest where the accused and deceased had fallen is stated to be at a walkable distance of 20 minutes. He also admits that the accused was under fear and also disturbed and lying in a semi conscious condition in the nallah. The deceased was also lying in unconscious condition there. He admits that the accused remained disturbed for 3-4 days after the incident. He admits that the path in the forest at that place crosses through a 'Dhank' (mountain) and the accused and

deceased were lying at a distance of 200 meters below the path. He also admits that the accused did not speak with anyone. He had not suspected that it is the accused who had killed his wife nor made any such statement to the police.

25. Therefore, as per evidence having come on record by way of the testimony of complainant, PW-1 the prosecution case that on contradictory statement qua whereabouts of the deceased the accused made he and other persons present there suspected that it is he who had killed her, is not at all proved and rather as per his testimony both the accused and deceased fell into gorge from the path situated in the hill side. About the so called motive that the accused had relations with another lady Ashu and that it is for this reason he had killed his wife is also not proved at all. On the other hand, as per his version the accused and deceased were living happily. He has not even been cross-examined also on behalf of the prosecution as he has partly resiled from his statement Ext.PW-1/A qua material aspects while in the witness box, as pointed out hereinabove.

26. The another material prosecution witness is PW-2 Hukam Chand. He has not supported the prosecution case at all and rather turned hostile. He was declared hostile and cross-examined by learned Public Prosecutor. He tells us that on being told by Narainu, PW-1 that his brother, the accused had fallen into gorge and is lying in an injured condition there, he went to the spot.

When inquired from the accused as to how he had fallen, no reply was given by him. Though as per this witness when asked the whereabouts of his wife, the deceased sometime had been telling that she had gone to her parent's house and sometime to her house, however, it is denied that on account of such conduct of the accused, they suspected that it is he who had killed her. The suggestion that he was not in a position to explain the injuries the accused sustained and that the accused was also lying in semi conscious condition have been admitted being correct. His further statement that it was a love marriage and that the accused and deceased both were living happily belies the case of the prosecution for the reason that if it is so, the accused had no occasion to kill his wife, particularly, when the so called motive to kill her is not proved at all. Therefore, PW-2 has also not supported the prosecution case at all. No doubt that part of the statement of a hostile witness which supports the prosecution case has to be relied upon and cannot be ignored. Therefore, if it is believed that the deceased and accused were lying in an injured condition on the spot and the deceased ultimately declared dead when taken to hospital, does not implicate the accused for the commission of her murder because nothing has come in his statement that he killed her by inflicting blow with axe Ext.P-8. On the other hand, when the accused himself was lying in an injured and unconscious condition on the spot with injuries on his person,

how he could have killed the deceased, his own wife with whom as per the prosecution case itself he was living happily.

27. Another material prosecution witness PW-4 Chet Ram though claims that he cooked food in the house of Dhani Ram and even had been serving the guests came there to participate in the marriage and that he noticed the accused having slapped his wife 2-3 times in the courtyard of said Dhani Ram and dragged her there. His testimony in cross-examination that he is also the resident of same village to which the accused belongs, however, not in speaking terms with him, leads to the only conclusion that his alleged statement qua slapping and dragging the deceased by the accused is not correct and rather made for some ulterior motive may be on account of enmity between him and the accused as there can't be any other and further reason of their non-speaking terms, irrespective of belongs to same village. It is unbelievable that this witness had any occasion to see the accused slapping his wife at a distance of 150 feet in the courtyard, that too, when he having cooked the food and even serving the same to the guests also. He, therefore, had no occasion to see any such activity going on there. Above all, as per his statement in cross-examination in the marriage about 200 persons were present, therefore, it is not known as to why anyone else has not noticed the accused having slapped his wife and also dragged her and why effort to associate any other person(s) to support this part of the

prosecution case has not been made. When this witness admits that ladies were having food separately, whereas, the gents separately and that the wife of PW-1 Narainu was also with the deceased, it is she who would have thrown some light qua this aspect of the matter. However, it is not known as to why she has not been examined. Interestingly enough, his statement was not recorded by the police as he stated while in the witness box. If it is so, his statement while in the witness box cannot be relied upon and has to be ignored because he was not associated during the investigation of the case by the police.

28. PW-5 Maghu Ram is the father of the accused. He has also not supported the prosecution case and was declared hostile. It has come in his cross-examination conducted on behalf of the prosecution that he went to the place where the accused and deceased were lying on hearing noise. When reached there, he noticed that the accused and deceased both had fallen through a 'Dhank' into gorge. On inquiry from the accused as to where his wife was, he told that she had gone to her parent's house. The accused and deceased, according to him, both had gone to attend the marriage of daughter of Dhani Ram. Though he admits the relations between the accused and another lady Ashu and that accused used to beat his wife, the deceased. He has also admitted that this was the cause of killing the deceased by the accused. However, when further cross-examined by learned defence

counsel, it is stated that his memory is weak. Also that, he is illiterate. The marriage of the accused and deceased was love marriage. As per his further version, his statement was not recorded by the police. Both the accused and deceased were lying on the spot in unconscious condition. Both were taken to civil hospital, Sundernagar for treatment. The deceased was declared as brought dead in the hospital by the doctor on duty, whereas, the accused gained consciousness after two days. He has also admitted that path at that place is narrow and is through forest. If one does not walk cautiously, may fall down into gorge. Therefore, PW-5 has also not supported the prosecution case at all. His statement in cross-examination conducted on behalf of the prosecution that the accused had relations with another lady Ashu and it is for this reason he has killed his wife, the deceased cannot be believed to be true, particularly when it has further come in his cross-examination conducted by learned defence counsel that he is illiterate and his memory is weak. According to him, his statement was not recorded by the police. However, the prosecution has not associated said Ashu during the course of investigation of the case nor cited her as a witness. Had it been so, the defence would have an opportunity to cross-examine her. Therefore a passing reference in the statement of this witness and also in the prosecution case is not sufficient to arrive at a

conclusion that illicit relations of the accused with said Ashu was the cause of killing the deceased by him.

29. The another circumstance which the prosecution has pressed in service against the accused is the recovery of alleged weapon of offence, axe Ext. P-8, consequent upon the so called disclosure statement Ext.PW-7/A he allegedly made in the presence of HC Chaman Lal (PW-7) and HC Inder Dev of Police Station, BSL Colony, Sundernagar. There is, however, no grain of truth in this part of the prosecution case because from the testimony of HC Chaman Lal (PW-7) who was posted in police station, BSL colony, Sundernagar itself, it cannot be believed by any stretch of imagination that the accused has made the disclosure statement Ext.PW-7/A. As a matter of fact, the disclosure statement and recovery effected on the basis thereof otherwise is also a weak type of evidence. The statement under Section 27 of the Act leading to discovery of facts exclusively in the knowledge of maker thereof and if such facts ultimately discovered in consequence of the statement so made, some guarantee should be there that information given by the accused was true and it is only in that situation such evidence can be relied upon to fasten liability on the accused. In the case in hand, PW-7 no doubt has stated while in the witness box that the disclosure statement Ext.PW-7/A was made by the accused in his presence while in custody in the police station. The prosecution, however,

has failed to explain as to what necessitated to record the statement only in the presence of official witnesses i.e. two Head Constables posted in the same police station. On the other hand, BSL colony, Sundernagar is a thickly populated area which falls under the Municipal Committee, Sundernagar and it cannot be believed by any stretch of imagination that no other person from the locality or from the area which falls within the jurisdiction of this police station came there in connection with some work or otherwise. PW-7 when cross-examined has expressed his inability to tell as to how many persons visited the police station on that day. He has not denied that no-one from the general public came to the police station on that day. Meaning thereby that the I.o. has intentionally and deliberately fabricated the disclosure statement Ext.PW-7/A which was not made by the accused. In order to show that the same has been made by the accused two official witnesses have been associated, again intentionally and deliberately to ensure that the prosecution case which to his own knowledge was false supported by them during the course of trial. The testimony of HC Chaman Lal (PW-7), therefore, can't be believed to be a genuine and acceptable evidence qua this aspect of the matter.

30. Above all, axe like Ext. P-8 is generally available in every house, particularly in rural areas. When the prosecution witnesses themselves have stated that the accused was lying in an injured

and semi unconscious condition, whereas, the deceased at a distance of 10 feet therefrom in an unconscious condition, which as per the findings recorded hereinabove by way of fall into gorge through 'Dhank' from the path, the accused had no occasion to have assaulted the deceased with the axe Ext.P-8. Otherwise also, as per the prosecution case itself, the accused and deceased were on there way to home from the marriage. The house was away from the spot where both were lying in the nallah in injured condition. It is not understandable as to when and how the axe was brought by him which was in the house. The prosecution case, as a matter of fact, qua this aspect of the matter is palpably false. There is no question of using axe by the accused to kill the deceased as it is for this reason, no blood was detected thereon, as is apparent from the perusal of the report of serilogist Ext.P-X. Though it has come in the disclosure statement Ext.PW-7/A that the axe was washed by the accused with water after the commission of offence, however, when the prosecution story is silent. On the other hand, as per the prosecution case itself, he was taken to hospital along with the deceased from the spot itself. When he washed the axe and kept the same in the roof of slateposh house, no plausible explanation is forthcoming qua this aspect also. It is also doubtful that the injury on the forehead of the deceased was caused with axe Ext.P-8 alone. No doubt, in the opinion of Dr. Vivek Modgil (PW-6), the two injuries marked as star

on the person of deceased could have been caused by a sharp edged weapon, whereas, the remaining with blunt trauma. In his cross-examination, the suggestion that such injuries can also be caused by way of fall on a sharp edged stone though was denied at the first instance being wrong, however, in the same breath clarified that the injury on the skull which as a matter of fact was fatal could have also been caused by way of fall on stone from height. Therefore, the opinion of doctor is also not conclusive that fatal injuries on the person of deceased could have not been caused otherwise and only with the axe Ext.P-8. The I.O. with a view to book the accused by hook and crook in a false case had fabricated the evidence which approach is not at all appreciated. The accused, a member of weaker section of the society, hence a poor man has been implicated falsely in this case to the reasons best known to the I.O, PW-14.

31. When the disclosure statement Ext.PW-7/A is not proved as discussed in para supra, the discovery of axe Ext.P-8 vide memo Ext.PW-3/A is also not proved. No doubt, Ext.PW-3/A has been witnessed by Durga Dass (PW-3) and one Jitender Kumar. Jitender Kumar has not been examined. As regards, Durga Dass (PW-3), he has only stated that the accused got recovered one axe at village Khushla where he was brought by the police. What to speak of recovery of axe Ext.P-8 from the roof of a room of house, this witness has not even deposed that the same was recovered from

the house of the accused and rather as per his statement recorded hereinabove, the recovery was effected in village Khushla. Above all, it has come in his cross-examination that he did not go inside the house of the accused. He admits that spot is a secluded place and the path is narrow. The nallah is deep from the path. His testimony, therefore, supports the defence version that they fell down through 'Dhank' from path. Even if the recovery of cellphone and watch etc., is on the spot the same is hardly of any help to the prosecution case because the accused and deceased had fallen from 'Dhank' into gorge and lifted in injured condition therefrom. The cellphone, watch and chappal etc. may have been recovered therefrom, but such recovery does not connect the accused with the commission of offence.

32. As regards the recovery of jean pant and shirt of the accused, he allegedly worn at the time when brought in injured condition from the nallah to the road, according to PW-5 Maghu, the father of the accused, the same were handed over by him to the police in the police station on asking by them. Therefore, though PW-3 has stated about the same produced by PW-5 on the spot, however, the evidence to the contrary having come on record by way of testimony of PW-5 belies the statement of PW-3. Above all, even if jean pant and shirt of the accused soiled with blood etc. were taken in possession, again is of no consequence for the reason that after having fallen down through 'Dhank', he

may have received injuries on his person and the blood oozed out as well as the same soiled. The recovery of pant and shirt of the accused is, therefore, also of no help to the prosecution case.

33. The remaining prosecution witnesses HC Nand Lal and Constable Chet Ram PW-8 and PW-9 respectively are formal because PW-8 has entered rapat rojnamcha Ext.PW-8/A on receipt of information qua a woman brought to the hospital and has been declared dead, whereas, PW-9 has taken the case property to the Forensic Science Laboratory on being handed over by Inder Dev (PW-13), MHC police station. PW-10 Dharam Chand is the Patwari concerned who has issued the jamabandi Ext.PW-10/A and tatima Ext.PW-10/B to the police. PW-12 ASI Trilok Chand has made an endorsement Ext.PW-12/B on the back side of statement Ext.PW-1/A. He has also recorded the FIR Ext.PW-13/A. During the investigation of the case, he has recorded the statement of Dharam Chand (PW-10) and collected the copy of jamabandi Ext.PW-10/A and tatima Ext.PW-10/B. Inder Dev (PW-13) was posted as MHC in police station, BSL colony Sundernagar at the relevant time. He has deposed about the case property handed over to him from time to time and the entries thereof made by him in the malkhana register. He has also deposed about the case property having been sent to Forensic Science Laboratory and the report(s) received therefrom. PW-14 Inspector Binny Minhas, the then SI/SHO police station, BSL, colony Sundernagar is the

Investigating Officer. He has deposed about the manner in which he conducted the investigation. When cross-examined it is, however, stated by this witness that statement of lady namely, Ashu was not recorded by him. Also that, he has not collected any evidence regarding the relations of the accused with said Ashu. It is denied that the accused also received injuries on his person. Though the suggestion that the accused had multiple fracture in his leg, he expressed his inability to answer this question, however, in the same breath admitted that the accused was limping. Meaning thereby that the accused had also received injuries on his person but the I.O. has avoided to answer the suggestions so put to him by learned defence counsel deliberately to the reasons best known to him. He admits that the distance between spot and the house of the accused was about 1-½ kilometer. Such distance, according to him was covered by the residential houses of the people. Being so, how the accused could have killed the deceased in view of 'Abadi' nearby. His version that there was no path at the place where the deceased was lying is absolutely baseless for the reason that the spot as per the prosecution evidence itself is inside the jungle and the path was on hill side from where she had fallen. Therefore, the version of the I.O. in his cross-examination conducted by learned defence counsel leaves no manner of doubt that the investigation was not

conducted in a fair manner and rather with a view to implicate the accused by hook or crook in this case falsely.

34. On the other hand, the accused in his statement recorded under Section 313 Cr.P.C has denied the entire prosecution case either being wrong or for want of knowledge and rightly so because, in our opinion, he has not murdered his wife and rather she died by way of fall through '*Dhank*' into gorge from the path while on the way back to her house in the company of accused after attending the marriage in the house of Dhani Ram. The plea, the accused raised in his defence that his wife Manjeet Kaur had died due to fall from the hill finds support from the prosecution evidence itself, which has come on record by way of the testimony of PW-1, the complainant, Hukam Chand (PW-2) and Maghu Ram (PW-5), the father of the accused has also substantiated the same while in the witness box.

35. In view of the discussion hereinabove, the material prosecution witnesses i.e. the complainant PW-1 Narainu, PW-2 Hukam Chand and PW-5 Maghu Ram have not supported the prosecution case and rather their testimony substantiates the plea that the accused and deceased slipped from the path on hill top and fallen into gorge through '*Dhank*' and received injuries on their person. The alleged case of prosecution that the accused immediately before the commission of offence slapped and also dragged the deceased in the courtyard of the house of Dhani Ram

in the presence of PW-4 Chet Ram for the reason hereinabove also inspires no confidence. The recovery of axe Ext.P-8 and other articles consequent upon the alleged disclosure statement made by the accused is not at all established as the testimony of sole official witness PW-7 HC Chaman Lal associated to prove this part of the prosecution case lends no assurance thereto. Therefore, when the accused and deceased as per prosecution itself were leading happy married life, there was no occasion to the former to have killed the latter in the manner as claimed by the prosecution. The alleged prosecution story that the accused had love affairs with another lady Ashu is not at all proved on record. Even as per the testimony of the I.O. PW-14, he neither associated said Ashu nor was she interrogated during the investigation of the case. The alleged recovery of paper slip having written "Dev love Ashu" from inside the pen recovered from the spot is also not worthy of credence for the reason that in which portion of pen, the paper slip was kept inside it, remained unexplained. On the other hand, in our considered opinion, in the pen, there is no space for keeping any paper slip.

36. The present in view of above is, therefore, a case where learned trial Court has not appreciated the evidence available on record in its right perspective and to the contrary recorded the findings of conviction against the accused on the basis of conjecture and surmises. Such an approach has certainly resulted

into miscarriage of justice to the accused because he has not only been convicted on the basis of highly inadmissible evidence but also sentenced to undergo imprisonment for life. The impugned judgment, as such, is neither legally nor factually sustainable. It is, therefore, not possible to sustain the impugned judgment and sentence.

37. In view of what has been said hereinabove, this appeal succeeds and the same is accordingly allowed. Consequently, the conviction and sentence imposed on the appellant-convict Devi Ram are set aside and he is acquitted of the charge framed against him under Section 302 and 201 IPC, by giving him benefit of doubt. He is directed to be released from the custody forthwith unless required otherwise. The Registry to prepare the release warrants accordingly.

(Dharam Chand Chaudhary)
Judge

September 02, 2019
(naveen)

(Jyotsna Rewal Dua)
Judge