2024:CGHC:48242-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRREF No. 1 of 2024

In reference of State of Chhattisgarh R/o Police Station Masturi District-Bilaspur Chhattisgarh.

---- **Applicant**

versus

Umend Kenvat, aged about 34 years S/o Pardeshi Kevant R/o Village Hirri Thana Masturi District- Bilaspur, Chhattisgarh.

---- **Non-Applicant**

For Applicant/State : Mr. Shashank Thakur, Dy. Advocate General

For Non-applicant : Mr. Rajeev Shrivastava, Senior Advocate assisted by Mr. Sourabh Sahu and Abhyuday Singh holding brief of Mr. K. Rohan, Advocate

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CRA No. 1714 of 2024

Umend Kenwat S/o Shri Pardesi Kenwat, aged about 34 years R/o Village-Hirri, Police Station-Masturi, District-Bilaspur (C.G.)

----**Appellant**

Versus

State of Chhattisgarh Through- Station In-Charge, Police Station-Masturi, District-Bilaspur (C.G.)

---- **Respondent**

For Appellant : Mr. Rajeev Shrivastava, Senior Advocate assisted by Mr. Sourabh Sahu and Abhyuday Singh holding brief of Mr. K. Rohan, Advocate

For Respondent/State : Mr. Shashank Thakur, Dy. Advocate General

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Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Amitendra Kishore Prasad, Judge

Judgment on Board

Per **Ramesh Sinha, Chief Justice**

09.12.2024

1. The appellant herein namely **Umend Kenwat** has been awarded death sentence by the learned Xth Additional Sessions Judge Bilaspur in Sessions Case No. 37/2024 vide judgment dated 13.08.2024 after having found him guilty for offence punishable under Sections 302 (four times) of the Indian Penal Code (for short, 'the IPC') sentenced him to death by hanging under sub-section (5) of Section 393 of the Bhartiya Nagarik Suraksha Sanhita, 2023 along with fine of Rs.10,000/-, in default of payment of fine, additional S.I. for three months.

2. The learned Xth Additional Sessions Judge, Bilaspur in exercise of power conferred under Section 366 of the CrPC (Section 407 of BNSS) after passing the sentence of death submitted the proceedings to this Court for its confirmation and this is how this death reference is before us for consideration along with the appeal preferred by the accused / appellant herein being Cr.A.No.1714/2024.

3. The admitted facts and prosecution case are as follows :

A. The accepted fact in the case is that accused Umend Kewat was married to deceased Sukrita Kewat in the year 2017, out of their wedlock, they had three children Khushi (age 05 years), Lisa (age 03 years) and son Pawan (age 18 months). It is also accepted that Sumant Kewat (PW-2) is the brother-in-law (साला) of the accused, Teejaram (PW-1) is the elder brother of the

accused, Pardeshi (PW-4) is the father of the accused, Kanchan Bai (PW-6) is the mother of the accused, Brahma Prasad (PW-7) is the brother-in-law (साला) of the accused i.e. son of deceased Sukrita's uncle, Rajkumar (PW-4) brother-in-law (जीजा) of the accused, Damodar (PW-3) and Deenbandhu Patel (PW-5) are neighbours of the accused. It is also accepted that the accused has been arrested on 02.01.2024 as per arrest sheet Ex.P-14, since then he is in judicial custody till date. The accused has admitted in his statement under section 313(b) CrPC that after the incident he went to the police station himself, informed about the incident and after giving information came back to the place of incident with the policemen and after coming back all the people of the house woke up, after committing the murder he tried to commit suicide by hanging himself in the rope in the room and fell down due to the rope breaking.

B. The brief gist of the prosecution story is that the applicant Sumant (PW-2) is the brother-in-law (साला) of the accused. He is the only brother and having five sisters. The deceased Sukrita is his fourth sister who was married seven years ago to the accused Umed Kewat as per social customs. Out of their wedlock, two girls and one boy were born. On 02.01.2024, the applicant Sumant Kewat (PW-2) came to know through mobile phone at around 03.30 am that his brother-in-law (जीजा) accused Umed Kewat had strangled Sukrita Kewat and her children Khushi Kewat, Lisa Kewat, Pawan Kewat to death due to doubt on the

character of his sister Sukrita. Then he along with his family and villagers came to the house of accused Umed in village Hirri and saw that there was a crowd of villagers there. Going inside the house, he saw that her sister Sukrita Kewat was lying face down in the backyard of the house behind the toilet. There were injury marks on her face and neck and inside the house, where his brother-in-law (जीजा) the accused and sister lived with their children, on the edge of the bed, his niece (भांजी) Kumari Khushi, age 05 years, was lying face down. Kumari Lisa Kewat, age 03 years, was lying on her left side and his nephew (भांजा) Pawan, age 18 months, was lying flat in the middle of the bed, they were lying dead in unconscious state, there were clear marks of strangulation around their neck by some object like rope. Accused Umesh doubted the character of his sister Sukrita, used to beat her, quarrel and dispute, regarding which a meeting of the families of both had already taken place. Due to this doubt on character, accused Umesh killed all the four deceased. Then on the said information, unnumbered Merg Intimation (Exs.P-03, 04, 05, 06) were registered respectively. Thereafter, intimation of death (Exs.P-42, 43, 44, 46) was prepared, rural FIR was registered and FIR No. 4/2024 was registered as (Ex.P-45). Thereafter, after inspection of the place of incident, a site map of the place of incident (Ex.P-15) was prepared, dead body panchnama proceedings (Ex.P-16, 17, 18, 19) were prepared and the seizable articles lying at the place of incident were

recovered as per recovery panchnama (Ex.P-10), the said seized articles were seized as per (Exs.P-09, 11, 12, 13), thereafter, inquest of the deceased persons was prepared as per Exs.P.-27, 28, 29, 30 and post-mortem was conducted vide Exs.P-20, 21, 22, 23. The witnesses' statements were recorded. The accused's memorandum statement (Ex.P-4) was recorded and the rope used in the incident was recovered vide Ex.P-10 as per the accused's memorandum statement. Thereafter, seizure and seizure sheet (Ex.P-9, 12 and 13) were prepared. The Patwari prepared the sight map (Ex.P- 01).

C. Plain soil and bloodstained soil from the place of incident were recovered as per Ex.P-32. One old used earring and green coloured slippers from near the dead body of deceased Sukrita were seized vide Ex.P-31, and a piece of checkered, flowery and cartoon printed bed sheet with soil tied in the middle was found from the bedroom where the dead bodies of deceased Khushi, Lisa and Pawan were seized as per Ex.P-33. The incident spot was videographed. Thereafter, as per seizure (Exs.P-12, 34), the said camera, memory card and pendrive were seized and returned the camera on supurdnama. Memory card and pendrive article A-1 and A-2 were prepared and certificate of section 65B (Exs.P-39, 41) was prepared. Notice was served for recording the statement of witnesses. The accused was arrested as per (Ex.P-14) and information of arrest was given as per (Ex.P-47). Memorandum was issued to the Executive Magistrate as per

(Ex.P-37) for preparing the Patwari map. Thereafter, the Panchnama of the incident spot was prepared by the Patwari as per (Ex.P-01). A memorandum was written to the medical officer to provide the recovery report as per (Ex.P-38). The seized items were sent to the Regional Forensic Science Laboratory as per (Ex.P-49) for testing the preserved items in the case and the FSL report was obtained as per (Ex.P-51).

D. After completion of investigation, the charge sheet was presented before the Court of Judicial Magistrate First Class, Bilaspur, who has transferred the case was to the Court of Sessions, from where Xth Addition Sessions Judge, Bilaspur received the case on transfer for trial.

E. When the charges were narrated and explained to the accused through video conferencing, he subsequently rejected the entire prosecution story and pleaded that he was innocent and in his statement he pleaded that he was falsely implicated in a land dispute under Section 313 (b) CrPC and expressed his desire to examine defence witnesses in his support, but thereafter on 24.07.2024 he expressed his desire not to examine any witness.

4. The prosecution has examined as many as 16 witnesses and exhibited 54 documents Exs. P-1 to Exs. P-54.

5. **Defence of the Accused:** The accused/appellant herein entered into defence and abjure his guilt and pleaded innocence and false

implication. The accused did not exhibit any statement of defence witness nor adduced any oral or documentary evidence.

6. **Judgment / finding of the Trail Court:** The learned Xth Additional Sessions Judge upon appreciation of oral and documentary evidence on record convicted the appellant under Section 302 (four times) of IPC and sentenced as mentioned in the opening paragraph of this judgment and further made the present reference before this Court for confirmation of the same.

7. The learned trial Court in order to convict the appellant herein has found proved the following incriminating circumstances : -

1. The accused was present with the deceased persons on the night of incident and there is no evidence to show that he went outside his house, thus it is observed that the accused was present for the last time with the deceased persons, before their death.

2. The accused always suspected the character of his wife and previously also meeting was held about the suspicion of the character and the said fact was also admitted by the accused.

3. The accused has in its memorandum statement admitted the commission of crime and the accused himself went to the police station after the commission of crime and he tried to commit suicide but failed which goes to shows the

involvement of the accused in the crime and thus, the accused was guilty for commission of crime.

4. The death of all the four deceased were found to be proved as homicidal in nature.

5. Present is a case of rarest of rare case in which death sentence is the appropriate punishment.

6. Considering the manner in which the offence has been committed and four persons i.e. wife of the accused including his three minor children aged about 5 years, 3 years and 18 month were killed by strangulation with the help of a rope, appropriate penalty is the death sentence.

7. Feeling dissatisfied and aggrieved with the judgment of conviction recorded and sentences awarded, the appellant herein has preferred Cr.A.No.1714/2024 under Section 415(2) of the BNSS challenging his conviction for the aforesaid offence, particularly against the capital punishment awarded to him. However, the learned Xth Additional Sessions Judge in accordance with the provisions contained in Section 366(1) of the CrPC, submitted the sentence of death to this Court for confirmation and this is how both the cases have been clubbed together, heard together and are being disposed of by this common judgment.

Submissions of parties: -

8. Mr. Rajeev Shrivastava, learned Senior Advocate assisted by Mr.Sourabh Sahu and Mr. Abhyuday Singh, learned counsel, appearing for the accused/appellant, has argued :-

(i) That there is no eye-witness to the incident and the case of prosecution is based only on the circumstantial evidence, but prosecution has failed to bring home the offence beyond reasonable doubt and no conviction can be recorded unless the chain of circumstances is complete to reach to a conclusion that it is only and only the accused / appellant who has caused the murder of the deceased. His submission is that the prosecution has also failed to prove the guilt of the accused beyond reasonable doubt, as there are many lacunas and discrepancies in the case of the prosecution, which are not sufficient to order for death sentence and in such cases the accused must be given benefit of doubt and the accused must be acquitted.

(ii) That the only aggravating factor involved in the present case is multiple victims and heinous nature, but the same does not prove the guilt and involvement of the appellant in the present crime.

(iii) That at the time of incident, there are many people present in the house and the inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise and the burden to prove under Section 106 of Cr.P.C. cannot be put solely on

the accused, when the prosecution itself has failed to prove a *prima facie* case, as the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation. In support of his contention he placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Anees Vs. The State Govt. of NCT***, reported in ***2024 SCC OnLine SC 757***.

(iv) That as per the prosecution case, the accused came to police Station in the night and informed about the incident to Assistant Sub Inspector Hemant Patle and on receiving such information the Police along with the accused went to the place of incident, where the bodies were found, but the FIR was lodged on the information given by Sumant Kumar Kenwat (PW-2) at around 04:00 p.m. in the evening, whereas the first statement or the information of the incident should be the statement of the accused at the Police Station, but the same was not registered, which itself creates a doubt on the prosecution. Even the Assistant Sub Inspector Hemant Patle, to whom the accused told about commission of the Crime was not cited as the witness and in absence of the examination of Assistant Sub Inspector Hemant Patle the case of the prosecution cannot be proved beyond reasonable doubt. In support of his contention, reliance has been placed on the

judgment passed by the Hon'ble Supreme Court in the matter of ***Allarakha Habib Memon Etc. Vs. State of Gurajat***, reported in ***(2024) 9 SCC 546.***

(v) That the rope, which was seized on the basis of the memorandum of the accused vide Ex.P-13, there was long hairs attached with the rope and as per the statement of the Investigating Officer (PW-15), the said rope was sent for Medical Examination, however the Doctor (PW-10) has stated in his statement that, the rope received by him was not sealed and the same did not contain any hairs on it. Thus, the rope seized as per the memorandum was not proved as the same did not matches the description stated in the memorandum and the report given by the Doctor.

(vi) That as per the property seizure memo, the bedsheet of the room of the accused was also seized and there were footprints with soil was present, which was one of the essential pieces of evidence, but the same was not sent for chemical examination. In support of his submission, reliance has been place on the judgment passed by the Hon'ble Supremen Court in the matter of ***Suresh Chaudhary v. State of Bihar***, reported in ***(2003) 4 SCC 128.***

(vii) That the case of prosecution also establishes that, there was some property dispute with brother-in-law and sister of the accused, namely Dukalu and Budhwara Bai

and the same were not examined, even the accused has stated in his statement under Section 313 of Cr.P.C. about the false implication due to property dispute, but this fact was not explained by the prosecution, yet the trial Court has passed the death sentence against the appellant, which is not sustainable.

(viii) That there was no motive for the convict/appellant to commit the alleged crime as alleged by the prosecution. His submission is that in the case of circumstantial evidence, motive plays an important role and the prosecution has utterly failed to prove the case as to motive.

(ix) That when two views are possible, one leaning towards acquittal and another towards conviction, the benefit should be given to accused.

(x) That the findings of guilt recorded by the trial Court is based on surmises and conjectures, hence the impugned judgment is liable to be set-aside.

(xi) That the learned trial court has committed error in concluding that the case of the convict/appellant is covered under the *'rarest of rare cases'* and, therefore, the death sentence awarded to the convict/appellant is not legally justified.

(xii) In alternative, Mr. Shrivastava, learned Senior Advocate, would also submit that if the Court found proved

that offence against the appellant under Section 302 of the IPC is established, the offence, if any, would be covered by Section 300 Fourthly of the IPC and therefore death sentence can be commuted to life sentence relying upon the decision of the Supreme Court in the matter of **Shatrughna Baban Meshram v. State of Maharashtra**[1] (paragraph 29).

(xiii) Mr. Shrivastava, learned Senior Advocate for the appellant, would also rely upon the judgments of the Supreme Court in the matters of **Pappu v. State of Uttar Pradesh**[2], **Bhagwani v. State of Madhya Pradesh**[3], **Mofil Khan and another v. State of Jharkhand**[4], **Lochan Shrivas v. State of Chhattisgarh**[5] and **Mohd. Firoz v. State of Madhya Pradesh**[6] to buttress his submission and would submit that in the instant case, the learned Xth Additional Sessions Judge has not given any effective opportunity to adduce evidence on the question of sentence, particularly in respect of rehabilitation and reformation of the accused and the State has also not proved the inability of the accused that he cannot be rehabilitated and reformed and without any enquiry, he has

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1 (2021) 1 SCC 596

2 2022 SCC OnLine SC 176

3 2022 SCC OnLine SC 52

4 2021 SCC OnLine SC 1136

5 2021 SCC OnLine SC 1249

6 2022 SCC OnLine SC 480

been sentenced to death which is liable to be commuted to life sentence in case this Court comes to the conclusion and records finding that offence under Section 302 of the IPC is established beyond doubt by the prosecution. As such, the reference be rejected and the appeal be allowed setting aside the judgment of the trial Court convicting the appellant for offence under Section 302 of the IPC and sentencing him with capital punishment as stated above.

(xiv) The age of the appellant was about 34 years at the time of incident, there is every chance of his being reformed and rehabilitated and he has no criminal antecedents, therefore, his death sentence be commuted to life sentence.

9. Mr. Shashank Thakur, learned Deputy Advocate General, appearing on behalf of the State has argued :-

(i) That the motive for the crime was duly proved by the prosecution as the appellant used to suspect upon her wife (deceased) that she was having affair with another person, on account of which he used to beat her, due to which a meeting was also convened, which the accused had admitted in reply to question 8 recorded under Section 313 of Cr.P.C.

(ii) That the place of occurrence is proved without doubt as there is no suggestion that the incident occurred at any other place.

(iii) That there was sufficient evidence to prove the charge against the convict/appellant.

(iv) Cause of death of all the four deceased has been duly proved by the evidence of Dr. Anil Kumar (PW-10) that it was asphyxia due to strangulation and homicidal in nature.

(v) That recovery of ropes containing blood on it, used for commission of offence at the instance of appellant, has been duly proved by prosecution.

(vi) That the appellant himself has admitted in reply to question 32 recorded under Section 313 that he also tried to commit suicide after commission of alleged offence.

(vii) That the learned trial Court, finding the evidence adduced by the prosecution reliable and trustworthy held the convict/appellant guilty of committing murder of not only his wife on the basis of suspicion upon her character, but also for committing murder of his three minor children by strangulating with the help of rope, awarded the death sentence.

(viii) That so far as the sentence is concerned, while placing reliance upon ***Machhi Singh and others Vs. State of Punjab : (1983) SCC 470***, he argued that the trial Court has rightly sentenced the appellant for capital punishment

as the prosecution has fully established that this case falls under the category of *'rarest of rare cases'*.

(ix) Hence the impugned order is not liable to be set-aside.

10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record of the trial Court thoroughly and extensively.

11. ***The first question for consideration would be whether the death of deceased Sukrita Kewat, Khushi Kewat aged 5 years, Lisa Kewat aged 3 years, Pawan Kewat aged 18 months was a case of murder and criminal homicide ?***

12. In this regard, Doctor Anil Kumar (PW-10) has given evidence that -

(i) On 02.01.2024 at 12.50 p.m. he conducted the postmortem examination of the deceased Sukrita Kewat. On external examination of the dead body, he found that there was ligature mark on the neck which was all over the neck measuring 13 cm in length and 1 cm in width. Her neck was filled with blood. There was no postmortem stiffness in the dead body. He has given his opinion that the death of the deceased was due to suffocation caused by strangulation which was homicidal in nature and the death of the deceased occurred within 24 hours from the time of conducting the PM. He has duly certified Ex.P.20.

(ii) The same witness has further stated that on the same date at 01.20 p.m. on examination of the post mortem of the deceased Pawan Kewat aged 18 months, it was found that all around his neck Ligature mark was present, which was 8 cm in length and 1/2 cm in width. There was no post mortem stiffness in the dead body. He has given his opinion that the death of the deceased was due to suffocation caused by strangulation which was homicidal in nature and the death of the deceased occurred within 24 hours from the time of postmortem. He has duly certified Ex.P.23.

(iii) This witness has further stated that on the same date, on conducting the postmortem of Khushi Kewat aged 5 years at 01.50 pm, it was found that ligature marks were present on her entire neck. The length of which was 07 cm and width 1/2 cm. There was no postmortem stiffness present on the body. He has given his opinion that the deceased died due to suffocation caused by strangulation which was of homicidal nature and the deceased died within 24 hours from the time of conducting the postmortem. He has duly certified Ex.P. 21.

(iv) The same witness has further stated that on the same date, on conducting the postmortem of the deceased Lisa Kewat aged 3 years at 02.10 p.m., it was found that there were ligature marks all over her neck, which were 05 cm in length and 1/2 cm in width. There was no postmortem

stiffness on the body. He has given his opinion that the death of the deceased was due to suffocation caused by strangulation which was homicidal in nature and the death of the deceased occurred within 24 hours from the time of conducting the postmortem. He has duly certified Ex.P. 22.

He further stated that the police station in-charge had written a letter for the inquiry report of the rope used by accused Umesh Kewat for the murder and a muddy coloured plastic rope of 29 inches length and 2 cm circumference was placed before him on which he had given his opinion that

01. It is possible that the deceased and her children were strangulated to death using the seized rope.

02. Whether human blood and human skin is present in the rope used in the murder or not? This was confirmed by FSL after examination, its opinion has been given by him, he has duly certified Ex.P-38. There is no reason on record to disbelieve this witness. In cross-examination, this witness was asked that if a person's throat is strangled with a rope, is there a possibility of blood and skin residues coming in the rope? Then this witness clearly stated that it depends on the rope, if the rope is pointed and rough then there is a possibility of blood and skin residues coming in the rope. This witness further stated that he

has not found any damage to the tissues of the throat, the throat is filled with blood, the length of the windpipe in the throat of a person depends on the age of the person. This witness further stated that the windpipe was obstructed from the place where pressure was applied by the mark on the throat of the deceased. In the cross-examination, it was also suggested by the accused that whether strangulation causes a knot in the neck of a person or not, then the medical witness has stated that when a person hangs himself, then a knot mark of the rope appears on the neck it does not come from strangulation with a rope. Apart from this, this witness has clearly stated that ligature marks were visible on the neck of the deceased, thus, it is proved that the deceased died due to suffocation caused by strangulation. The evidence of this witness has been irrefutable in cross-examination, there is no reason available on record to disbelieve the evidence of this witness. The said fact has not been disputed by the accused, hence it is proved beyond doubt that the death of the deceased Sukrita Bai, Khushi Kewat, Lisa Kewat, Pawan Kewat was of homicidal nature.

13. Now it has to be seen whether the accused, on doubting the character of his wife Sukrita Kewat, in his house, strangled his

wife Sukrita, two daughters Khushi Kewat (age 05 years) and Lisa Kewat (age 03 years) and son Pawan Kewat (age 18 months) with a rope with the intention of causing their death by doing an imminent dangerous act?

14. In this regard, according to the prosecution story, the incident is of 02.01.2024 and it is between the night of 01.01.2024 and before sunrise on 02.01.2024. Apart from this, there is no eyewitness to the incident. All the deceased have died after sleeping at night. Therefore, the evidence of the witnesses is being examined on the above basis.

15. Since the entire case is based on circumstantial evidence, the law regarding circumstantial evidence is that the circumstances on which the inference of guilt is to be drawn must first be fully proved and the facts so proved must be relevant to the interference of guilt of the accused. The circumstances must be of a conclusive nature and they should be of such a nature as to exclude the proposition but leave only the proposition which is proposed to be proved. In other words there should be a chain of evidence which is so complete as to not absolve the accused and it should be such as to show that within all human probability the accused did the act. i.e. :-

1. There must be a series of facts.

2. These facts must be of conclusive nature.

3. These facts must be well connected with each other.

4. Facts must be well proven.

5. Facts of indifferent nature must be removed from consideration so that no conclusion can be drawn from either side.

6. Facts which are not well proven will also have to be removed from consideration.

7. It should only be possible to conclude that the crime is true from these.

8. These facts do not prove that the accused is innocent.

9. However, the court must be morally convinced that the accused

No other person other than has committed the crime.

16. It has been consistently laid down by the Supreme 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. (See **Hukam Singh v. State of Rajasthan, AIR 1977 SC 1063**; **Eradu and Ors. v. State of Hyderabad**, **AIR 1956 SC 316**; **Earabhadrappa v. State of Karnataka, AIR 1983 SC 446; State of U.P. v. Sukhbasi and Ors., AIR 1985 SC 1224; Balwinder Singh v. State of Punjab, AIR 1987 SC 350; Ashok Kumar Chatterjee v. State of M.P., AIR 1989 SC 1890**. 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. In **Bhagat Ram v. State of Punjab, AIR 1954 SC 621**, it was laid down by the Supreme Court that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

17. We may also make a reference to a decision of the Hon'ble Supreme Court in **C. Chenga Reddy and Ors. v. State of A.P., (1996) 10 SCC 193**, wherein it has been observed thus:

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

18. In **Padala Veera Reddy v. State of A.P. and Ors., AIR 1990 SC 79**, it was laid down by the Supreme Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
>
> (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

19. In **State of U.P. v. Ashok Kumar Srivastava, 1992 Crl.LJ 1104**, it was pointed out by the Supreme Court that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

20. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts

alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

21. Five golden principles which constitute *Panchseel* of proof of case based on circumstantial evidence have been laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, which state as under:-

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
>
> (3) the circumstances should be of a conclusive nature and tendency;

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

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

22. In the matter of **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 1 SCC 681**, the Supreme Court has held as under:-

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

23. The principles of circumstantial evidence is reiterated in **Nizam and another vs. State of Rajasthan, (2016) 1 SCC 550**, wherein the Supreme Court has held that:-

> "8. Case of the prosecution is entirely based on the circumstantial evidence. In a case based on

> circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, forming a chain and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally inconsistent with his innocence."

24. On looking deeply into this matter, it is evident that Sumant Kewat (PW2) who is the brother of deceased Sukrita Kewat has stated that on 02.01.2024 he was in his house when at about 03.30 in the morning he came to know on phone that his sister Sukrita and her three children had been murdered. On which he went to his sister's house in village Hirri and there he saw that the body of sister Sukrita was lying near the safety deposit box of Hirri's house and the bodies of the three children Lisa, Khushi, Pawan were lying on the bed in the room, rope marks were visible on the neck of all of them. Accused Umend used to beat his sister Sukrita many times earlier also due to suspicion, regarding which a meeting was also called in the village. When he reached his house in village Hirri on the date of incident, the bed with cloth rope and string was on top of the room and drugs were lying on top of the cupboard. At that time accused Umend was not there. Then he informed about the incident in Hirri police station through unnumbered death intimation Nos. 03, 04, 05, 06 respectively. Then the police went with him to Hiiri village and seized two

pieces of rope from the place of incident vide Ex.P-9. Another rope with which the murder was committed by strangulation was also recovered by the police in his presence vide Ex.P-10. In his presence, the video which was made by Ram Prasad Sahu in the police station was seized by the police as per seizure sheet Ex.P.-11. The site map Ex.P.-15 was prepared before him.

25. On being asked indicative questions by the prosecution, this witness has told that since marriage, Umesh Kewat used to beat his sister Sukrita due to doubts about her character. He came to know through phone on the night of 02.01.2024 that his sister and niece-nephew have been murdered by her husband Umesh Kewat. Black marks were visible on the neck of his sister and niece-nephew. When they went to their sister's house in Hiri, the body of sister Sukrita was lying dead near the toilet in Kolabadi and the bodies of nieces Khushi Kewat, Lisa Kewat, Pawan Kewat were lying dead on the bed in his sister's room. This witness further said that Umend Kewat had also told that he had decided to kill his wife and children and then die with them. As per his plan, he told his wife to go and urinate. After saying this, both of them went towards the Kolabadi side of the house. As soon as his wife was getting up after urinating, he tied the rope that he was holding around her neck from behind and threw her on the ground. He held the rope tightly around her neck till she died. When his wife died, he left her and went to his room. After that, he went to his room and strangled the girl Lisa Kewat who

was sleeping on the bed inside the room with the same rope. After that, he strangled Pawan Kewat with the same rope and killed her. He strangled Khushi Kewat with the same rope and killed her. After committing the murder, he tried to commit suicide by hanging himself in the rope in the room but the rope broke and he fell down. He then searched for poison to kill himself but could not find it and came to Masturi Police Station. This witness clearly testified to his police statement Ex.P. 24.

26. This witness has stated in paragraph 13 of his examination that the police took him and other witnesses and the accused to his house where in his presence the accused took out a rope from the side of the cupboard kept in his room and gave it to him, in respect of which recovery panchanama Ex.P-10 was prepared. This witness has stated that as per seizure memo Ex.P-9, at the indication of the accused in his presence, an old used plastic rope whose total length was 26 inches and an old used plastic rope with three ends sticking out, was tied to the thatched roof of the incident site, one end of each rope looked as if it had broken due to the weight, was jammed. As per Ex.P.12, the accused had taken out a rope tied to bamboo on the way to the *cola* from the courtyard of his house, which was of muddy colour and was made from the string of an old plastic sack and had seized it.

27. In the cross-examination on behalf of the accused, a challenge has been given regarding the date of incident that this witness has stated that the incident took place on 03.01.2024, which is

recorded in the statement under Section 161 CrPC, regarding which a question has been asked in paragraph 22 of the cross-examination, this witness has clearly stated in the cross-examination that he went to the house of the accused on 02.01.2024 and in the main examination, he has stated the incident as of 02.01.2024. This fact is also confirmed by paragraph 26 of the cross-examination in which this witness has stated that he had left his village Bargawa on a motorcycle at 07.00 am to go to Hirri and it takes him 50 minutes to reach village Hirri from his village. In the suggestion given by the accused himself, this witness has stated that he had reached village Hirri at around 08.00 am. As far as the question of incident dated 02.01.2024 or 03.01.2024 is concerned, in this regard all the witnesses of the case have clearly stated that the incident took place on 02.01.2024. The post-mortem of the deceased was also done on 02.01.2024. Since the incident took place on the night of 01.01.2024 and after 12.00 pm. Due to change in date, the date becomes 02.01.2024, hence it cannot be believed that the witness has given a different date of the incident. In any case, rural people, especially those who work as laborers and are less educated, cannot be expected to tell word by word, hence the accused will not get any help from this argument.

28. The same witness has denied the fact in paragraph 27 of the cross-examination that his sister Sunita or Vishnu had not given any information about the incident. The facts told by the witness

after he was declared hostile by the prosecution cannot be rejected on the ground that they were told after he was declared hostile. The witness himself has stated that he did not remember the incident as it was old. The evidence of this witness has been irrefutable in cross-examination and no challenge has been put on the above mentioned points of evidence due to which this witness can be disbelieved.

29. PW-4 Pardeshi Kewat (father of the accused, father-in-law of deceased Sukrita Bai and grandfather of the rest of the deceased) has stated in his evidence that on the day of the incident, the New Year cake was cut and after eating and drinking, the whole family went to sleep. At around 03.00 in the night, the police knocked on the door of his house, then he got up and asked the policeman outside, then the policeman told him that someone has murdered your grandson, granddaughter and daughter-in-law, then he fell unconscious after hearing this. The same witness, on being asked indicative questions by the prosecution, has accepted these facts that on 01.01.2024, his granddaughters cut a cake in the house to celebrate his and his wife's wedding anniversary on New Year's Day, which was eaten by all, while cutting the cake, daughter-in-law Sukrita and the children came, Umesh was in his room, after that the whole family ate food, then daughter-in-law Sukrita took food inside for Umesh. After eating food, his granddaughter-in-law, son-in-law Dukalu, daughter Budhwara were sleeping at shade and he and

his wife Kanchan were sleeping at *rengana* of the house. Around three o'clock in the morning, police personnel came with Umesh and woke them up by knocking on the door. When questioned by the court itself, the witness has accepted these facts that the accused had gone to Masturi police station after the incident at night, the accused came with the police personnel at 3.00 in the night and got the door opened and told the entire incident in front of the police personnel, then this witness has answered the questions in the correct way. In paragraph 10 of the cross-examination, this witness has told that he has no information about at what time Umesh left his house and where he went, that is, it is shown from the evidence of this witness that after cutting the cake, all the members of the house went to sleep and the accused Umesh was in his room while cutting the cake, the deceased Sukrita had gone with food for the accused. The above fact has also been confirmed by the mother of the accused, Kanchan Bai (PW-6) in her examination-in-chief, i.e., on the night of the incident, the accused Umesh was in his room only. There is no evidence as to when he went out of the house. But Pardeshi (PW-4) has given clear evidence of this fact in the examination-in-chief, cross-examination and in the question by the court that the accused came with the policemen and got the door opened.

30. Kanchan Bai (PW-6) (mother of the accused, mother-in-law of deceased Sukrita Bai and grandmother of the remaining deceased) has supported the evidence of Pardeshi Kewat (PW-4)

and on being asked suggestive questions by the prosecution, has clearly admitted in paragraph-5 that at the time of cutting the cake, daughter-in-law Sukrita and children were also present, Umesh was in his room. They all had their dinner and Sukrita went to the room with food for Umesh, after having dinner, granddaughter-in-law, son-in-law Dukalu and daughter Budhvara Kewat slept in the shade and she and her husband Pardeshi Kewat slept in the *rengana*.

31. Brahma Prasad Kewat (PW-7) who was the son of deceased Sukrita's uncle, has also confirmed the incident and told that the incident took place on the night of 01.01.2024, he was in his village Bargawa when Sumant Kewat called him and told that Umesh had killed his wife and three children, on which he came to village Hirri and went to sister Sunita's house, then he saw that Sukrita's body was lying near the safety tank of the body and the bodies of children Khushi, Lisa, Pawan were lying on the bed inside the room, there was a brown mark of rope around their neck. Accused Umesh Kewat had gone to the police station and informed about the incident in the police station, then the police came to the spot and then wrote a report regarding the incident. This witness has told in paragraph 26 of his cross-examination that he reached the spot at 08.00 am and when he reached the spot, the police had already reached. In paragraph 27 of the cross-examination, this witness has been suggested that if Pardeshi's son-in-law Dukalu has killed Sukrita and her children,

then you cannot tell, so the witness says that the accused Urmand Kewat himself was saying that he himself killed them. That is, this suggestion does not help the accused because this fact has been denied by the witness in the case.

32. Rajkumar Kewat (PW-4) who is the brother-in-law of accused Umed, this witness is married to accused Umed's sister Shukwara, has supported the evidence of Sumant (PW-2), Pardeshi (PW-4), Kanchan Bai (PW-6), Brahmaprasad (PW-4) in his evidence. The evidence of this witness is that he was in village Godadih on the date of incident. Then Radha Kewat, daughter of Teejaram called him at about 03.00 in the night and told that uncle Umed has killed his wife Sukrita Bai, Khushi, Lisa, Pawan, on which he and Shukwara reached village Hirin at about 05.00 in the morning. When they reached Umend's house in village Hirri, there was a huge crowd there and the police had also arrived. On being asked indicative questions by the prosecution, this witness has stated in paragraph 04 that Radha Kewat had also told him on the phone that they all woke up when the police brought Umend Kewat home. According to paragraph 12 of the cross-examination of this witness, it takes about 35-50 minutes to reach village Hirri from village Godadih and he has accepted the fact that when he reached village Hirri, the police had already reached the place of incident and there was a crowd there and has specifically denied the fact that when he reached Hirin, the time was about 08.00 o'clock. The witness himself said

that the time was about 05.30 o'clock. The police took my statement i.e. according to the evidence of this witness, he was informed about the incident by Teejaram's daughter Radha Kakat at about 03.00 in the morning, he reached the spot at around 05.30 in the morning. The evidence of this witness also proves the fact that the police took the accused Umesh along with them and took him home.

33. From perusal of the aforesaid evidence it is apparent that the prosecution has proved the following circumstantial evidence against the appellant:-

(i) The prosecution has proved that there was dispute between the accused and his deceased wife (Sukrita Kewat) in relation to suspicion over her character.

(iii) The bodies of the deceased were found in the house wherein the accused was living along with them and was present in the house soon before the incident.

(iv) Finding of ropes at the scene of the incident.

(v) Blood was found on the ropes used for strangulation of the deceased as per FSL report (Ex.P-51).

(vi) Motive behind causing the incident was proved by the prosecution.

(vii) On the basis of memorandum statement of the accused (Ex.P-8), at his instance ropes used for commission of offence has been seized vide Seizure memo (Ex.P-9).

(viii) Dr. Anil Kumar (PW-10) who conducted postmortem has opined that cause of death of all of the deceased was asphyxia due to strangulation and it is homicidal in nature.

34. As the death of all the four deceased took place inside the house, where the deceased and accused/appellant were living together, therefore, the question would be, whether Section 106 of the Indian Evidence Act, 1872 (for short, the Evidence Act) would be applicable or not?

35. Section 106 of the Evidence Act, states 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.*"

36. This provision states that when any fact is specially within the knowledge of any person the burden of proving that fact is upon him. This is an exception to the general rule contained in Section 101, namely, that the burden is on the person, who asserts a fact. The principle underlying Section 106 which is an exception to the general rule governing burden of proof applies only to such matters of defence which are supposed to be especially within

the knowledge of the other side. To invoke Section 106 of the Evidence Act, the main point to be established by prosecution is that the accused persons were in such a position that they could have special knowledge of the fact concerned.

37. In the matter of ***Shambhu Nath Mehra v. The State of Ajmer***[7], their Lordships of the Supreme Court have held that the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 of the Evidence Act 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 Supreme 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 preeminently 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 cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the*

7 AIR 1956 SC 404

burden lies on an accused person to show that he did not commit the crime for which he is tried."

Their Lordships further held that Section 106 of the Evidence Act cannot be used to undermine the well established rule of law that save in a very exceptional class of case, the burden is on the prosecution and never shifts.

38. The decision of the Supreme Court in ***Shambhu Nath Mehra*** (supra) was followed with approval in the matter of ***Nagendra Sah v. State of Bihar***[8] in which it has been held by their Lordships of the Supreme Court 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

8 (2021) 10 SCC 725

relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

39. Similarly, the Supreme Court in the matter of ***Gurcharan Singh v. State of Punjab***[9], while considering the provisions contained in Sections 103 & 106 of the Evidence Act, held that the burden of proving a plea specially set up by an accused which may absolve him from criminal liability, certainly lies upon him, but neither the application of Section 103 nor that of 106 could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It was further held by their Lordships that it is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a *prima facie* case, that the question arises of considering facts of which the burden of proof may lie upon the accused. Their Lordships also held that the burden of proving a plea specifically set up by an accused, which may absolve him from criminal liability, certain lies upon him.

40. The principle of law laid down by their Lordships of the Supreme Court in ***Gurcharan Singh*** (supra) has been followed with approval by their Lordships in the matter of ***Sawal Das v. State of Bihar***[10] and it has been held that burden of proving the case against the accused was on the prosecution irrespective of whether or not the accused has made out a specific defence.

Last seen together: -

9 AIR 1956 SC 460

10 AIR 1974 SC 778

41. The theory of last seen together has been found proved by the trial Court which has been vehemently assailed on behalf of appellant before this Court. In a very recent decision rendered on May 13, 2022 in the matter of **Veerendra v. State of Madhya Pradesh**[11], their Lordships of the Supreme Court relying upon the decision in the matter of **Nizam and another v. State of Rajasthan**[12] has held that it would not be prudent to base conviction solely on 'last seen theory'. It was further held that where time gap between 'last seen' and 'time of occurrence' is long it would be unsafe to base the conviction solely on the 'last seen theory' and held that in such circumstances, it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. It has been held in paragraphs 32.1 to 32.4 of the report as under: -

> "32.1 In the decision in Nizam and Anr. Vs. State of Rajasthan [(2016) 1 SCC 550] this Court held that it would not be prudent to base conviction solely on 'last seen theory'. This Court, obviously, sounded a caution that where time gap between 'last seen' and 'time of occurrence' is long it would be unsafe to base the conviction solely on the 'last seen theory' and held that in such circumstances, it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution.
>
> 32.2 In State of Rajasthan Vs. Kashi Ram reported in (2006) 12 SCC 254, at paragraph 23 this Court held :
>
> > "23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that

11 Criminal Appeal Nos.5 & 6 of 2018

12 (2016) 1 SCC 550

> when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohd., AIR 1960 Mad 218 : 1960 Crl LJ 620."

32.3 In Arabindra Mukherjee Vs. State of West Bengal [(2011) 14 SCC 352], while dismissing the appeal by the convict who stood sentenced for offences punishable under Section 302, 364, 120B and 201 of IPC, this Court held: "once the appellant was last seen with the deceased, the onus is upon him to show that either he was not involved in the occurrence at all or that he had left the deceased at her home or at any other reasonable place. To rebut the evidence of last seen and its consequence in law, the onus was upon the accused to lead evidence in order to prove his innocence."

32.4 In Pattu Rajan Vs. State of Tamil Nadu [(2019) 4 SCC 771] this Court held in paragraph 63 thus :-

> 42. "It is needless to observe that it has been established through a catena of judgment of this

> court that the doctrine of last seen, if proved, shifts the burden of proof on to the accused, placing on him the onus to explain how the incident occurred and what happened to the victim who was last seen with him. Failure on the part of the accused to furnish any explanation in this regard, as in the case on hand, or furnishing false explanation would give rise to strong presumption against him, and in favour of his guilt, and would provide an additional link in the chain of circumstances."
>
> (Emphasis supplied)

43. Similarly, in the matter of **Satpal v. State of Haryana**[13], last seen theory has been held to be a weak piece of evidence by itself to found conviction upon the same singularly, unless it is coupled with other circumstances, and observed as under: -

> "6. We have considered the respective submissions and the evidence on record. There is no eye witness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in

13 (2018) 6 SCC 610

> the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

44. Coming to the facts of the present case, the evidence of the witnesses has proved the fact that on the date of the incident, a cake was cut in the house of the accused and the accused was in his room at that time, his wife, deceased Sukrita, went to his room with food for the accused and everyone was sleeping in their respective rooms, sister-son-in-law and their children were sleeping in the shade. There is no explanation in the statement of the accused under section 313 (b) CrPC as to how he got the information about the incident?, at what time did he get it? nor is there any explanation as to whether he went out of his house after sleeping at night or not? and if he went out of the house, then at what time did he go? and at what time did he return? that too in such a situation when the sister-in-law and the children of the accused were sleeping in the shade outside the house. The accused himself has admitted in question No. 32 (statement of the accused under section 313 (b) CrPC) that after committing the murder, he tried to commit suicide by hanging himself from the ceiling of the room but the rope broke and he fell down.

45. Even if it is assumed for the sake of logic that the accused went to report the incident, why did he not inform his family members, parents and daughter-in-law about it? It is an unusual conduct of the accused that on getting information about the incident, instead of waking up his family members while they were

sleeping, he went straight to the police station to report the incident. It is also worth considering that the accused was present in his room on the date and time of the incident, the children were sleeping on the bed in the room, he had gone to Kolabadi with his wife for bathroom, then in such a situation there is no explanation of how the wife died or who caused her death, if the accused came back to his room, then how the three children died or who caused it, this fact has also not been explained by the accused, because when the accused was in the room, he would have to tell how the children died.

46. Thus, after appreciating the entire ocular and medical evidence on record, we do not find any illegality in appreciation of oral, medical and circumstantial evidence or arriving at a conclusion as to the guilt of the appellant by the trial Court warranting interference by this Court and we accordingly hereby confirm the conviction of the appellant recorded under Section 302 of the IPC.

47. Now, the question is whether the case is covered under the "rarest of the rare case" and the death sentence to the appellants is justified.

48. In ***Machi Singh vs. State of Punjab (1983) 3 SCC 470***, the Apex Court has held that

> *“1. When the murder is committed in an extremely brutal, grotesque diabolical, revolting, or dastardly manner so as to arouse intense and extreme*

indignation of the community. For instance, (i) when the house of the victim is set aflame with the end in view to roast him alive in the house, (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death, (iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

2. When the murder is committed for a motive which evince total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust. (c) a murder is committed in the course for betrayal of the motherland.

3. When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them or, make them with a view to reverse past injustices and in order to restore the social balance.

4. In cases of "bride burning' and what are known as "dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

5. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

6. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, (b) a helpless woman or a person rendered helpless by old age or infirmity, (c) a person vis-à-vis whom the murderer is in a position of domination or trust, (d) a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similarly reasons other than personal reasons."

49. In ***Ravji vs. State of Rajasthan : (1996) 2 SCC 175,*** where the Apex Court held that it is only characteristics relating to crime, and not to criminal, which are relevant for sentencing. The Apex Court observed as follows :-

"The crimes had been committed with utmost cruelty and brutality without any provocation, in a calculated manner. It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the attrocity and brutality with

which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry to justice against the criminal'."

50. In ***Swamy Shraddananda (2) vs. State of Karnataka: (2008) 13 SCC 767***, the Apex Court observed:

"The inability of the criminal justice system to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results. On the one hand there appears a small band of cases in which the murder convict is sent to the gallows on confirmation of his death penalty by this Court and on the other hand there is a much wider area of cases in which the offender committing murder of a similar or a far more revolting kind is spared his life due to lack of consistency by the Court is giving punishments or worse the offender is allowed to slip away unpunished on account of the deficiencies in the criminal justice system."

51. In ***Raj Kumar v. State of Madhya Pradesh, (2014) 5 SCC 353,*** a case concerning the rape and murder of a 14 years old girl, the Apex Court directed the appellant therein to serve a minimum of 35 years in jail without remission.

52. In ***Selvam v. State : (2014) 12 SCC 274***, the Apex Court imposed a sentence of 30 years in jail without remission in a case concerning the rape of a 9 year old girl.

53. In ***Tattu Lodhi v. State of MP, (2016) 9 SCC 675***, where the accused was found guilty of committing the murder of a minor girl

aged 7 years, the Apex Court imposed the sentence of imprisonment for life with a direction not to release the accused from prison till he completes the period of 25 years of imprisonment.

54. In ***Sachin Kumar Singhraha v State of MP : (2019) 8 SCC 371,*** where the accused was sentenced capital punishment for the offence of rape and murder of 5 year girl, the Apex Court converted the sentence into life imprisonment for 25 years without remission and has observed:

> *"Life imprisonment is the rule to which the death penalty is the exception. The death sentence must be imposed only when life imprisonment appears to be an altogether inappropriate punishment, having regard to the relevant facts and circumstances of the crime."*

55. The Apex Court in the case of ***Mohd. Firoz vs. State of Madhya Pradesh (Criminal Appeal No. 612 of 2019, decided on 19.04.2022)*** has commuted the death sentence imposed on man for rape and murder of 4 year old girl to life imprisonment. Para-43 of the aforesaid order dated 19.04.2022 reads as under :-

> *“43. Considering the above, we, while affirming the view taken by the courts below with regard to the conviction of the appellant for the offences charged against him, deem it proper to commute, and accordingly commute the sentence of death for the sentence of imprisonment for life, for the offence punishable under Section 302 IPC. Since, Section 376A IPC is also applicable to the facts of the case,*

*considering the gravity and seriousness of the offence, the sentence of imprisonment for the remainder of appellant's natural life would have been an appropriate sentence, however, we are reminded of what Oscar Wilde has said - "**The only difference between the saint and the sinner is that every saint has a past and every sinner has a future"**. One of the basic principles of restorative justice as developed by this Court over the years, also is to give an opportunity to the offender to repair the damage caused, and to become a socially useful individual, when he is released from the jail. The maximum punishment prescribed may not always be the determinative factor for repairing the crippled psyche of the offender. Hence, while balancing the scales of retributive justice and restorative justice, we deem it appropriate to impose upon the appellant-accused, the sentence of imprisonment for a period of twenty years instead of imprisonment for the remainder of his natural life for the offence under section 376A, IPC. The conviction and sentence recorded by the courts below for the other offences under IPC and POCSO Act are affirmed. It is needless to say that all the punishments imposed shall run concurrently."*

56. On due consideration, we find that the aggravating circumstances in this case are that the convict/appellant and deceased / victims were residing in same house and on doubting the character of his wife Sukrita Kewat, in his house, strangled his wife Sukrita, two daughters Khushi Kewat (age 05 years) and Lisa Kewat (age 03 years) and son Pawan Kewat (age 18 months) with a rope and thereafter, the accused also tried to commit suicide by hanging

himself in the rope in the room and fell down due to the rope breaking, thereafter, the accused himself had gone to police station and informed about the incident. The mitigating factor is that the appellant was doubting character of his wife and due to which he committed her murder along with his three minor children and also tried to commit suicide and the whole case is based on circumstantial evidence.

57. Though it shocks the conscious of the society at large, but, yet, in the facts and circumstances of the case, considering the young age of the appellant, upon thoughtful consideration, we are of the view that extreme sentence of death penalty is not warranted in the facts and circumstances of the case. We are of the opinion that this is not the *'rarest of rare case'* in which major penalty of sentence of death awarded has to be confirmed. In our view, imprisonment for life would be completely adequate and would meet the ends of justice. Accordingly, we direct commutation of death sentence into imprisonment for life. We further direct that the life sentence must extend to the imprisonment for remainder of natural life of the appellant herein – Umend Kenwat.

Conclusion

58. Consequently, Criminal Reference No. 01 of 2024 made by the Xth Additional Sessions Judge, Bilaspur to the extent of confirmation of imposition of death sentence to appellant Umend Kenwat is rejected.

59. However, Criminal Appeal No. 1714 of 2024 filed on behalf of appellant – Umend Kenwat is partly allowed. Conviction of the appellant under Section 302 (four times) of the IPC is maintained, but, sentence of death is commuted to life imprisonment by maintaining the fine amount. We further direct that life sentence must extend to the imprisonment for remainder of natural life of the appellant herein – Umend Kenwat.

Compliance

60. The Registrar (Judicial) is directed to send a duly attested copy of this judgment to the concerned Court of Session as mandated under Section 371 of the CrPC for needful. He is also directed to send a copy of this judgment to the concerned Superintendent of Jail, where the appellant is undergoing his jail term, to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistant of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Amitendra Kishore Prasad)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Chandra

Head Note

Capital punishment can only be awarded in very exceptional and rarest of the rare cases, which is lacking in present case, accordingly, death sentence awarded to the appellant is commuted to imprisonment for life by directing that the life sentence must extend to the imprisonment for remainder of natural life of the appellant.

मृत्युदण्ड केवल असाधरण और दुर्लभतम मामलों में ही दिया जा सकता है, जिसका वर्तमान मामले में अभाव है, तदनुसार, अपीलार्थी को दिये गये मृत्युदण्ड की सजा का लघुकरण आजीवन कारावास की सजा में इस निर्देश के साथ किया गया कि आजीवन कारावास की सजा अपीलार्थी के शेष प्राकृतिक जीवन तक विस्तारित होगी।