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Court No. - 9

Case :- CRIMINAL APPEAL No. - 1598 of 2007

Appellant :- Rajesh @ Sajesh Tewari
Respondent :- State of U.P.
Counsel for Appellant :- Dinesh Chandra Tiwari,Desh Rata,Desh Ratan Mishra,Desh Ratan
Counsel for Respondent :- Govt.Advocate

Hon'ble Mrs. Sangeeta Chandra,J.
Hon'ble Shree Prakash Singh,J.

(Per; Hon’ble Shree Prakash Singh,J.)

1. Heard Sri Desh Ratan Mishra, learned Amicus Curiae appearing for the appellant, Rajesh @ Sajesh Tiwari, Sri Vijay Prakash Dwivedi, learned A.G.A.-I for the State and perused the entire record available before us.

2. Under challenge in this criminal appeal is the impugned Judgment and Order dated 24-12-2005 passed by the learned Additional Sessions Judge/Fast Track Court No. 1, Bahraich in Sessions Trial No. 229 of

2002, tilted as ‘State Vs Rajesh @ Sajesh Twari’, arising out of Case Crime No. 216 of 2002, under section 302 of the I.P.C., Police Station-Fakharpur, District-Bahraich, whereby the appellant, Rajesh @ Sajesh Tewari, has been convicted and sentenced to undergo life imprisonment with a fine of Rs. 20,000/- and in default of payment of fine, he has further been directed to undergo further period of simple imprisonment for two years.

3. The brief prosecution story is, that the father of the appellant, Prahlad Kumar Tewari, the informant, alleged that his son, Rajesh @ Sajesh Tewari, aged about 36 years, was suffering with mental sickness since last one year and his treatment was got done. He further alleged that the appellant, after separation from the joint family, was residing with his own family and on 31-08-2002/01-09-2002, in the night at about 02.00 O’clock, he murdered his wife and his son, Durgesh.

4. On the basis of the aforesaid written report, Exhibit Ka-1 submitted by the first informant, Prahlad Kumar Tewari, the first information report, Exhibit Ka-2/6 came to be lodged against the appellant on 01-09-2002 for the offence under section 304 of the I.P.C.

5. The inquest proceedings started on 01-09-2002 at about 12.35 P.M. and it was concluded at 01.15 P.M., on the same day. The inquest report as Exhibit-Ka-2, is

duly proved by P.W.-2, Sant Ram and P.W.-4, Maharaj Kumar.

6. According to the post-mortem report of the deceased, Exhibit Ka-5, which has been proved by P.W.-7, Dr. R.S.Madhoriya, there were four incised wounds on the body of the deceased, Durgesh. The injury no. 1 is the incised wound 9 cm. x 3 cm. bone deep in the left side of neck and 3 cm. below the left ear. The second injury is also an incised wound, muscle deep below 2 cm. of the left ear and the third injury is also the incised wound 12 cm. x 7 cm. bone deep on the back side and the fourth injury is incised wound 9 cm. x 6 cm. bone deep below 7 cm. to chin. The rigor mortis was not present in the upper side of the body, whereas, the same was present in both the legs. The stomach was empty and both the chambers of heart were empty. The opinion of the doctor is that the said injuries were inflicted by a sharp-edged weapon and all the injuries were one and half days old. The reason of death was due to excessive bleeding of the injuries.

7. Further according to the post-mortem report of the deceased, Smt. Kamlesh, there were two incised wounds and one abrasion. The incised wound no. 1 is 7 cm. x 2 cm., muscle deep in the left side of the neck, below 4 cm. of left ear. The second injury is also incised wound 12 cm. x 5 cm. bone deep below 7 cm. of chin in the foresight towards cervical and the injury no. 3 is an abrasion of 6 cm., which is 2 cm. below the left

shoulder towards front side and as per the opinion of the doctor injuries no. 1 & 2 were caused with some sharp-edged weapon and the injury no. 3 was caused with some sharp pointed weapon. There was no rigor mortis on the upper body, whereas on the lower side of the body, the rigor mortis was present. Both the chambers of the heart were empty and the intestine was also empty. The injuries were about one and half day old and the reason of the death is due to excessive bleeding because of the severe injuries.

8. The Investigating Officer recorded the statements of the witnesses under section 161 of the Cr.P.C. and he also visited the place of occurrence and prepared the site plan, Exhibit Ka 6/10.

9. After conclusion of the investigation, the Investigating Officer submitted the chargesheet on 15-07-2003 against the appellant under section 304 of the I.P.C. The charges for the offence under section 302 of the I.P.C. were framed against the appellant/accused, who denied the charges and claimed to be tried.

10. In order to bring home the guilt of the appellant, the prosecution produced Prahlad Kumar Tewari, P.W.-1, Sant Ram, P.W.-2, Shivam, P.W.-3, Maharaj Kumar, P.W.-4, Ram Kailash, P.W.-5, C/350 CP Sudheer Kumar Tiwari, P.W.-6, Dr. R.S. Madhoriya,who prepared the post mortem report and examined the injuries of the deceased as P.W.-7, Constable 277 Prathivi Pal, P.W.-8

and Jay Singh, SSI, P.W.-9. Except apart, Dr. R.C. Singh was produced as C.W.-1, who examined the appellant with respect to his mental state.

11. The appellant in his statement recorded under section 313 of the Cr.P.C., stated the prosecution story to be false and also stated that he has falsely been implicated in the present case and claimed himself to be innocent. In response to question no. 4 of the prosecution, the appellant replied that he was not present in the house in the night of the occurrence of the offence as he was at Birahim Deeha Village for seeing the dance at the occasion of Janamashtmi. In response to the question that whether he has to say something, he stated that he is mentally sick for the past one and a half years and because of the same, he used to abuse the persons and for this reason, the people were having enmity with him and therefore, he has falsely been implicated.

12. It is a case where no defence witness was produced and examined from the side of the accused.

13. Learned trial court after appreciating the evidence on record adduced by the prosecution and by the accused, convicted and sentenced the appellant. In the circumstances, referred as above, the accused-appellant is before this court in the instant appeal.

14. The argument of learned counsel for the appellant canvassed before us is that in the night of occurrence of the offence, the appellant was infact not present in the house as he had gone to the neighbouring village namely, Birahim Deeha for seeing the dance and when he came back in the morning, he found that his wife and son, Durgesh, have been murdered.

15. It is also argued that prior to one and half years of the occurrence of the incident, the mental condition of the appellant, Rajesh @ Sajesh Tewari, was not good and he was under treatment for mental illness and it was wrongly presumed by the informant that the appellant has committed the murder of his wife and son and therefore, he has falsely been implicated on the basis of suspicion only. He further argued that the medical prescriptions regarding the neurological treatment of the appellant were submitted before the learned trial court, but those were not considered, rather they were ignored, which resulted in a faulty decision. He has also pointed out that because of the mental sickness, the appellant used to grumble a lot and the informant himself has admitted regarding mental sickness of the appellant in the first information report and in the cross examination, the informant has also stated that the appellant was mentally ill for the past one and half years, from the date of occurrence.

16. It is also submitted that P.W.-2, Santram and P.W.-4, Maharaj have also stated that the appellant was

mentally sick since last one and half years. Further by clinical observation of the appellant, it was found that there was discharge of fluid from his left eye and pimples over his forehead and he used to talk incoherently.

17. He further argued that no one has seen the incident and only on the basis of suspicion, the appellant is implicated. He added that it is a case of circumstantial evidence, whereas the prosecution has failed to channelize the story. Also, he has emphasized that the case of the appellant falls within the four corners of section 84 of I.P.C., as there is a plethora of evidence i.e. statements of the prosecution witnesses themselves, that the appellant was suffering with mental sickness and therefore, the appellant is entitled for the benefit of the defence of insanity under section 84 of the I.P.C., which has been erroneously ignored by the learned trial court.

18. Per contra, learned A.G.A. appearing for the State has submitted that the appellant has rightly been convicted vide Judgment and Order dated 24-12-2005, which is discussed and well reasoned. He further submits that the appellant is named in the first information report, while alleging that he has assaulted his wife and elder son with sharp edged weapon, on the vital parts of their body which caused their death. He next added that the prosecution has proved it’s case on the basis of reliable and uncontroverted evidence and

therefore, interference by this court is not warranted. He accordingly prays for dismissal of this criminal appeal.

19. Considering the submissions of learned counsel for the appellant, learned A.G.A. for the State and after perusal of material placed on record, we find that the alleged incident is said to have occurred in the night of 31-08-2002/01-09-2002 at about 02.00 a.m., regarding which the First Information Report, Exhibit Ka-2/6 was lodged on 01-09-2002 at about 08.00 A.M. The first informant, P.W.-1, the father of the appellant has proved the written report, Exhibit Ka-1 and the first information report, Exhibit Ka-2/6, has been proved by P.W.-8, Prathvi Pal. Therefore, we find that a prompt first information report came to be lodged in respect of the incident in question, which rules out possibility of false implication of the accused-appellant. According to the written report, Exhibit Ka-1, the deceased are stated to have been murdered by the present appellant with a sharp edged weapon as both the deceased had received multiple incised wounds on the vital parts of their bodies. The dead bodies of the deceased were found lying in the house of the appellant, where he is said to be sleeping with his wife and children. The appellant-accused was arrested and on his pointing out, the weapon used in the alleged offence, was recovered.

20. The inquest report, Exhibit Ka-2, has been proved by P.W.-8, Prathvi Pal. According to the opinion of the witnesses of the inquest, the death of the deceased had occurred due to the injuries on their bodies. P.W.-8 had also agreed with the opinion of the witnesses of the inquest.

21. The postmortem report, Exhibit Ka-3, has been proved by P.W.-7, Dr. R.S. Madhoriya, according to which the details of the wounds and their position and the opinion, Exhibits Ka-7 & Ka-8, are reproduced hereinunder :

''16. अभियोजन साक्षी पी0डब्लू0–7 डा0 आर0एस0मधौरिया परीक्षित हुए हैं। जिन्होने यह साक्ष्य दिया है कि दिनांक 02.9.02 को 2.45 पी0एम0 पर उन्होने मृतक दुर्गेश का नियमानुसार पोस्टमार्टम किया था और उसके शरीर पर मृत्यु के पूर्व की निम्नलिखित चोटें पायी थी–

1. कटा हुआ घाव 9 सेमी0 x 3 सेमी0 हड्डी तक गहरा गले के बाईं ओर कान से 3 सेमी0 नीचे घाव में सभी मांसपेशियां कटी हुई थी, नसें व रक्त वाहिनी नलिकायें भी कटी हुई थी।

2. कटा हुआ घाव मांस तक गहरा, बायें कान के 2 सेमी0 नीचे।

3. कटा हुआ घाव 12 सेमी x 7 सेमी0 हड्डी तक गहरा 3 सेमी0 नीचे बायें कन्धे पर पीछे की ओर 3 सेमी नीचे।

4. कटा हुआ घाव 9 सेमी0 x 6 सेमी0 x हड्डी तक गहरा ठुड्डी से 7 सेमी0 नीचे।

मृतक के उपरी हिस्से की अकड़ने जा चुकी थी, परन्तु दोनों पैरों में अकड़न मौजूद थी। मृतक का पेट खाली था तथा हृदय के दोनों चैम्बर खाली थे।

मृतक के शरीर पर किसी धारदार हथियार से चोटें आई थी। सभी चोटें करीब डेढ़ दिन पुरानी थी।

मृतक की मृत्यु मृत्यु पूर्व पहुंचायी गयी चोटों से आघात एवं रक्तस्त्राव के कारण हुई थी। उसी दिन दो बजे मृतका श्रीमती कमलेश का भी उन्होंने पोस्टमार्टम किया था और उनके शरीर पर मृत्यु पूर्व निम्नलिखित चोटें पाई थी–

1. कटा हुआ घाव 7 सेमी0 x 2 सेमी0 मांस तक गहरा गर्दन के बाई तरफ 4 सेमी बांये कान के नीचे।

2. कटा हुआ घाव 12 सेमी0 x 5 सेमी0 हड्डी तक गहरा ढुड्ढी से 7 सेमी नीचे आगे की ओर जो सर्वाइकल जो पीछे गर्दन की छठी हड्डी के लेबल पर था। चोट के नीचे सभी मांसपेशियां, धमनियां आदि कटी हुई थी।

3. रेखीय खरोंचे 6 सेमी लम्बाई में बायें कन्धे के 2 सेमी नीचे आगे की ओर था।

चोट संख्या 1 व 2 किसी धारदार हथियार से आई थी तथा चोट संख्या 3 किसी नुकीले हथियार से आना सम्भावित थी। मृतका के शरीर की उपरी हिस्से की अकड़न जा चुकी थी एवं नीचे के हिस्से पर अकड़न मौजूद थी।

हृदय के दोनों चैम्बर खाली थे, आमाशय भी खाली था।

मृतका के शरीर पर आई हुई चोटें करीब डेढ़ दिन पुरानी की तथा मृतका की मृत्यु, मृत्यु पूर्व कई चोटों से रक्तस्त्राव व आघात के कारण हुई थी।

इस साक्षी ने यह भी साक्ष्य दिया है कि उसने उक्त दोनों पोस्टमार्टम रिपोर्ट अपने लेख व हस्ताक्षर में तैयार किया था, जोकि क्रमशः प्रदर्श क–7 व प्रदर्श क–8 है।''

22. The cause of death is reported as shock and hemorrhage as a result of anti-mortem injuries.

23. P.W.-1,Prahlad Kumar Tewari, who is the first informant had first of all reached the place of occurrence, has supported the version in his Examination in-Chief, but later, in the cross examination, he was declared hostile. The fact remains that in the Examination-in-Chief, he stated that his grandson came at about 1.00 O' Clock in the night and woke up him and told him that the appellant and his wife were quarrelling and asked him to go to their house and thereafter, he went to the house of the appellant leaving his grandson in his own house and as

soon as he reached there, he found that the dead bodies of his daughter-in-law and one of his grandson namely, Durgesh lying on the cot and their throats slit. He did not see the appellant at the place of occurrence. He started shouting and on such cries, his other son, Rakesh and his daughters, Poonam and Gita and his wife came over there. The statement of the father of the appellant in Examination-in-Chief is that soon after it was intimated to him by his grandson that the appellant and his wife were quarrelling, he had reached the place of occurrence and found that his grandson and daughter-in-law were murdered. He however subsequently became hostile in Cross Examination, which is but natural human behaviour where if a son's life is jeopardized because of any reason whatsoever then, a father will come forward to rescue his son and make best efforts. As per the settled proposition of law, the statement of an important witness cannot be discarded or ignored because of his becoming hostile, rather the court will go through the whole of his statement including the Examination-in-Chief and would try to find out the truth and the natural statement, which infact finds corroboration from the initial narration in the first information report.

24. We may refer the law with respect to the hostile witness, which has been discussed by the Hon'ble Apex Court in the case of ***Bhajju Vs State of Madhya Pradesh*** reported in **(2012)4 SCC 327**. Paragraph no. 36 of the said Judgment is quoted hereinunder :-

"36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence…"

25. The statement narrated in the Examination-in-Chief by the P.W.-1 that soon after the intimation given by his grandson, he visited the place of occurrence, where he found that his daughter-in-law and grandson, had been murdered and the appellant naturally had fled away as the offender usually does run away after he commits offence. Therefore, the intimation regarding quarrel between parents, by an innocent boy aged about 11 years to his grandfather, corroborates the statement of P.W.-1 to the extent that the appellant was present in the house and only he and none has committed the murder, in the deadly night.

26. Apart from above, it is also noticeable from the first information report as well as the statement of the P.W.-1 that the appellant’s treatment was going on and he was suffering from some undiagnosed mental sickness and this fact has also been supported by the other witnesses of the prosecution**.**

27. The P.W.-2, Santram,who is not an eye witness, also stated that on getting the information that the son and wife of the appellant have been murdered, he went

to the house of the appellant at about 09.00 A.M., which is far away from his residence and as soon as he reached there, he saw that the dead bodies of wife of the appellant namely, Kamlesh and his son, Durgesh were lying on the cot. The dead body of Durgesh was lying in the courtyard,whereas the dead body of Smt. Kamlesh was lying inside the room and there were incised wounds over the throats of the deceased persons. He stated that the appellant, Rajesh was sitting inside the police jeep. P.W.-2 has also been declared hostile, but, the statement of this witness does prove the murder of the wife of the appellant and his son, to the extent, that the dead bodies were found inside the house of the appellant.

28. P.W.-3 is the elder son of the appellant and 11 years of age,who had gone to his grandfather's house to inform him regarding the quarrel taking place in between his father and his mother. In his Examination-in-Chief, he stated that he heard the sounds of quarreling of his mother and father and therefore, he went to his grandfather to inform him about the same, who was living separately and whose residence is a little further from the place of occurrence. He also stated in his cross examination that his father and mother used to quarrel a lot, but, he did not know what was the reason behind the quarrel, on the very day of occurrence of offence. He has also supported the version of the prosecution to the extent that as soon as he informed his grandfather, the grandfather went to

the place of occurrence and he remained at the place of his grandfather and he came back in the morning to his house and found that the dead bodies of his brother, Durgesh and mother, Smt. Kamlesh, were lying in the house, he had also seen that throats of the deceased were slit. This part of the statement not only corroborated the statement of P.W.-1, it has, channelized the story of the prosecution.

29. P.W.-4, Maharaj Kumar, in his testimony, has stated that he had gone to the place of occurrence as he was informed in the morning, and he saw that the dead bodies of the wife and the son of the appellant were lying in the courtyard and thereafter, he returned to his home and once the Station House Officer came to the spot, he was called and before him, blood stained soil and bedding namely 'Kathri' were collected and were sealed in separate boxes. He also stated in his Examination-in-Chief that when he visited the spot, he found that the blood stained 'Gandasa' was kept on a 'Takhat'. He has also been declared hostile by the prosecution.

30. P.W.-5, Ram Kailash, stated that the deceased, Smt. Kamlesh Kumari is his daughter and his daughter was got married with the appellant about 12 years ago from the date of the incident and the appellant sometimes tortured his daughter, and this was intimated to him by his daughter and the villagers had also told him regarding the aforesaid. He also stated

that the appellant used to demand money from his daughter and in case of not fulfilling the same, he used to torture his daughter. The abovesaid statement of the P.W.-5 supports the prosecution story, in so far as the motive and intention behind the murder is concerned.

31. Further P.W.6, C/350 CP Sudheer Kumar Tiwari, has proved the Chik F.I.R./F.I.R. and it is also stated that the Written Tahrir was given by Prahlad Kumar Tewari, P.W.-1, the informant, at about 08.00 P.M. on 01-09-2002 and on the basis of the same, he prepared the Chik F.I.R.

32. Dr. R.S. Madhoriya, P.W.-7, who was posted as Physician in Sadar Hospital, Bahraich, has also proved the postmortem reports of the deceased persons and stated that he had conducted the postmortem of the deceased, and four incised wounds were found on the body of the deceased Durgesh, and three incised wounds were found on the body of the deceased Smt. Kamlesh, and the nature of the weapon recovered supports the injuries inflicted on the bodies of the deceased. The sharp edged weapon of assault i.e. ‘Banka’ was recovered on the pointing out of the appellant in the presence of the witness, namely, Sant Ram Lodh, which corroborates the injuries on the bodies of the deceased.

33. The case of the prosecution is that the deceased wife as well as the deceased son were murdered in the house of the appellant-husband/father in the night and the said fact has come in the testimony of the appellant's father, who is the informant and P.W.-1 of the case. Therefore, the burden was upon the appellant to offer an explanation as to what transpired in the dead of the night, when the incident occurred and having failed to do so, attracted the presumption under section 106 of the Indian Evidence Act,1872(hereinafter referred to as 'Act, 1872') and therefore learned trial court has rightly reached to the conclusion that since the appellant had failed to offer an explanation much less and acceptable one, he was responsible for the death of his wife and son.

34. We have already examined the testimony of P.W. -1 and we find that the son of the appellant while hearing the noise of the quarrel, went to the house of his grandfather and intimated him and on such information, the father of the appellant came to the place of occurrence, where the dead bodies of daugther-in-law(wife of the appellant) and grandson(son of the appellant) were found and the throats of both the dead bodies were slit. There is no such suggestion made on behalf of the defence that P.W.-1 had not visited the place of occurrence, as soon as he was intimated by his grandson.

35. Further, it is not the case of the defence either by any evidence or by any suggestion that the incident had taken place somewhere else. The proximity in the time of information provided by the son of the appellant to his grandfather and the crime and the presence of the appellant in the house with his wife and son in the intervening night of 31-08-2002/01-09-2002, is proved.

36. We find that there is no reason to disbelieve the testimonies of the father as well as the elder son of the appellant, which clearly make out that the appellant was present in the house on intervening night of 31-08-2002/01-09-2002. The weapon i.e. 'Banka' was also recovered by the Station House Officer in the presence of the witnesses and also proved before the trial court. The death occurred in the dead of the night in the room/house, where the appellant-husband, deceased-wife and deceased-son, including three other sons were residing and the presence of the appellant at the time of commission of crime is proved from the statement of the elder son of the appellant supported with the statement of P.W.-1. In the aforesaid circumstances, the accused is under obligation to offer an explanation under section 106 of the Act, 1872, as he alone would know what happened in the dead of the night and how the death of his wife and son occurred, which was not natural and was a homicide. The deceased wife had three incised wounds and deceased son had four incised wounds and as per the medical evidence, the

death occurred due to shock and haemorrhage as a result of the antemortem injuries. The fact that the dead bodies of the deceased were found lying in the courtyard and in the room of the house of the appellant, has been established beyond the reasonable doubt by the prosecution while adducing the evidence.

37. The defence taken by the appellant while stating that in the night of the occurrence of the incident, he was in another village, has been belied by the statement of an innocent child that the mother and father were quarrelling in the house. There was no occassion for a child to speak a lie with respect to quarrel between his parents. This is a natural conduct of the child and in consequence, when the P.W.-1/informant came to the spot, he found the dead bodies of the wife and son of the appellant, which leaves no doubt that the appellant was present at the place of the occurrence on the said night.

38. In this context, we may refer to the decision of the Hon'ble Supreme Court in the case of ***Trimukh Maroti Kirkan Vs. State of Maharastra*** reported in ***(2006)10 SCC, 681,*** wherein it is held as under:-

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside

over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecution 1944 AC 315 quoted with approval by Arijit Pasayat, J. in State of Punjab vs. Karnail Singh (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:
(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.
...
21 In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law

which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of Tamil Nadu v. Rajendran (1999) 8 SCC 679 (para 6); State of U.P. v. Dr. Ravindra Prakash Mittal AIR 1992 SC 2045 (para 40); State of Maharashtra v. Suresh (2000) 1 SCC 471 (para 27); Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731 (para 15) and Gulab Chand v. State of M.P. (1995) 3 SCC 574 (para 4)].

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

(22) This decision was followed in the case of ***'Sabitri Samantaray vs. State of Odisha' (2023) 11 SCC 813*** *wherein in para no.19 it was held as under:-*

"15. This Court in its judgment in Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10 SCC 681 has also observed:-

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

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

...

19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events. [See Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681]"

(23) It was also followed in another decision reported in (2014) 12 SCC 211 ***'State of Rajasthan vs. Thakur Singh'*** *wherein para nos.17 to 20 and 22 reads as under:-*

"17. In a specific instance in Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681 this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said:

"22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been

consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

18. Reliance was placed by this Court on Ganeshlal v. State of Maharashtra (1992) 3 SCC 106 in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in Dnyaneshwar v. State of Maharashtra (2007) 10 SCC 445 this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In Jagdish v. State of Madhya Pradesh (2009) 9 SCC 495 this Court observed as follows:

"It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."

....

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the

accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts."

39. Apart from the above, we have also noticed that the first information report has been lodged under section 304 of the I.P.C. and in the first information report, it is narrated that the son of the informant was mentally sick and he had undergone treatment from a neuro psychiatric doctor and in this regard certain medical prescriptions were placed, which is apparent from perusal of the original trial court records. It also reveals that in the prescription of Jamuna Neuro Psychiatric Centre dated 12-02-2002, the doctor has noted the behaviour of the appellant as *'Bakte Hai,' 'Mere pass Braham Shakti Hai'*. Patient history is also mentioned as 'Post Hepatic Neuralgia' and likewise, several medical prescriptions, are on record. For verification of prescriptions and the mental sickness of the appellant, letters were sent by Sri Ashok Kumar Mishra, the then Additional Sessions Judge/F.T.C., Bahraich on 08-09-2003, 14-10-2003 and 01-11-2003, but, there seems to be no response in this regard from the (Superintendent of District Jail, Bahraich) but the matter proceeded ignoring the aforesaid facts and the trial has been concluded.

40. In the above scenario and in the background of the statements of P.W.-1, P.W.-3, P.W.-4, one thing is common that the appellant was suffering with some mental sickness. The medical prescriptions are also much prior to the date and time of the occurrence of

crime and therefore, the same could not be said to be prepared for the purpose of escaping from the guilt.

41. As is evident from the record, the claim of innocence and the additional plea taken during the course of the examination under section 313 of the Cr.P.C. including the denial of the charges, by the appellant that since the appellant was under the influence of some invisible power or under some illusion he was unable to understand his action in it's right perspective, which would necessarily prove that there was no mens-rea to commit such offence. In fact, it is an "actus reus", which infers the 'mens-rea".

42. When we examine the act of the appellant in the light of the facts and circumstances of this case, it is discernible that the murder has been committed in the house of the appellant and he was arrested near the place of the occurrence. This fact indicates towards an unnatural course of action on the part of a criminal. If the accused had fled away from the place of occurrence initially then he should not have returned back again to the place of occurrence or be seen anywhere near it. Also the appellant had taken a specific plea in his statement recorded under section 313 of the Cr.P.C. that he had gone to watch some dance performance in the neighbouring village and further, he was suffering with mental sickness for the past one and half years from the date of the incident.

43. The plea is taken by the appellant that he was not in such mental state as to know the nature of his act as he was under some influence of invisible power. In view this argument that the appellant is of unsound mind, we may examine whole story again. It is apparent that from very beginning of the lodging of the first information report, it has been stated that the appellant was mentally sick and he was under treatment. Further, the other prosecution witnesses, in their testimonies, have also stated that the appellant was suffering from mental sickness, coupled with the fact that the medical prescriptions with respect to his psychiatric treatment were produced before the learned trial court and are available on the record, which cannot be totally ignored in the facts and circumstances of this case and thus, we are not hesitating to proceed to examine the case of the appellant further in the light of a valid defence provided under section 84 of the I.P.C. Section 84 of the I.P.C. is reproduced hereinunder :-

"84. Act of a person of unsound mind:-Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

44. The first principle, 'the burden of proof', is well interpreted in the case of ***Sharad Birdhichand Sharda Vs State of Maharashtra,*** reported in ***(1984) 4 SCC, 116,*** and it is held that the burden of proof to establish a case beyond the reasonable doubt

is upon the prosecution,whereas section 105 of the Indian Evidence Act,1872, provides that in case of any pleading of 'Exception Clause', the burden of proof would shift to the person, who is claiming such exception. Section 105 of the Indian Evidence Act is reproduced hereinunder :-

"105. Burden of proving that case of accused comes within exceptions:- When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

45. Infact, the existence of special circumstances,information or exception, based on preponderance of probabality, in the knowledge of such person, who proves it, will get the benefit of the exceptions. The best effort to adduce the evidences has been made on behest of the appellant while submitting the medical prescriptions of the Neuro Psychiatric Physician, but, the learned trial court has failed to consider it. It is also a trite law that it is not necessary in every circumstance that the accused should lead the defence,but, the court can also consider it on the basis of evidence available on record.

46. In the case of ***James Martin Vs State of Kerala*****,** reported in **(2004)2 SCC 23,** in paragraph no. 13, it has been held as follows :-

"13. Under section 105 of the Indian Evidence Act,1872(in short the Evidence Act), the burden of proof is on the accused, who sets up the plea of self defence, and, in the absence of proof, it is not possible for the court to presume the truth of the plea of self defence. The court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to the circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence and not a question of the accused discharging any burden."

47. We shall now examine the matter in the light of facts and circumstances of the case that whether this matter would fall in one of the exceptions clause that the appellant was suffering with insanity or he was not in such a state of mind at the time of commission of the crime to understand the nature of his actions and whether the intention/motive for inflicting the injuries is apparent in the action of the appellant.

48. It's a case of circumstantial evidence as there is no direct evidence of the murder allegedly committed by the appellant. The facts about mental illness of the appellant are also emerging from very beginning of lodging of the first information report by the first informant (father of the appellant) and in the deposition of the testimony of the prosecution

witnesses, 2,3 & 4, which has been ignored by the learned trial court.

49. Further, we have also noticed that the plea of mental sickness has also been taken by the appellant in his defence, in his statement recorded under section 313 of the Cr.P.C. Several medical prescriptions were produced before the learned trial court and were in the knowledge of the trial court as thrice, letters were written to the Jail Superintendent for medical examination of the appellant, but, they remained unresponded. The overall sceniario with respect to the mental sickness of the appellant particularly, the observation of the doctor in one of the prescription that he was talking 'Betuka' and stated that 'Uske Pass Brahamrakshak Hai' is indicative of symptoms of insanity of the appellant.

50. In this very context, we may refer to the decision of the Hon'ble Supreme Court rendered in the case of ***Chunni Bai Vs State of Chhattisgarh*** reported in ***2025 SCC Online SC 955,*** wherein it has been held in paragprah nos. 32,33,34,35,36 and 58 as follows:-

"32. In the light of the above legal position, we may now examine the facts and circumstances as well as the evidence on record to consider whether the appellant was in fact suffering from insanity or was not in a proper state of mind during the commission of crime for the purpose of understanding whether she had the "Intention" or whether she had knowingly and consciously committed the act without any excuse.

33. The plea taken by the appellant during her examination by the Trial Court is that she came under the influence of certain Invisible power when she committed the act. However, this plea does not appear to be a legally recognised exception as is the case of sudden and grave provocation, heat of passion, right of self-defence, etc. There is a difference between medical Insanity and legal insanity. What Section 84 IPC provides is legal insanity as distinguished from medical Insanity. A person is said to be of unsound mind on whom criminal liability cannot be fastened if at the time of commission of the act, he is incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law. It may also be noted that the expression "unsoundness of mind" or the word "insanity" has not been defined in the Penal Code, 1860, though these have been used interchangeably. In the absence of a precise definition of these terms, Insanity or unsoundness of mind has been variously understood by courts in varying degrees of mental disorder and the courts have applied this attribute to give the benefit of doubt or otherwise, depending on the facts and circumstances of the cases. However, mere odd behaviour or certain physical or mental ailments affecting the emotions or capacity to think and act properly have not been construed to be "unsound mind" within the scope of Section 84 of the IPC. All kinds of insanity as are understood are not covered under Section 84 of IPC but only such acts, when committed by a person who was incapable of knowing the nature of the act or that he was doing which is either wrong or contrary to law are concerned. As a consequence, only such mental or medical condition which affects or disturbs the faculty of the person which renders him unable to know the nature of act committed or that he was doing which he did not know that it was wrong or contrary to law can be given the benefit of Insanity under Section 84 IPC, and thus escape criminal liability.

(emphasis supplied by us)

34. In the present case, it is noticed that apart from the plea taken by the appellant during her examination under Section 313 CrPC that she was under the Influence of Invisible power, no evidence has been brought on record by the appellant which would prove that she was of "unsound-mind" within the meaning of Section 84 of IPC.

35. Nevertheless, merely because the appellant could not convey herself in a legally understandable expression or idiom of her mental condition to indicate the existence of legal Insanity or prove such a condition and provide evidence, in our opinion, such a plea could not have been completely ignored by the Trial Court or by the High Court.

36. In the peculiar facts and circumstances as revealed in the présent case, and also keeping in mind that the Incident happened in a rural setting and the appellant not being highly educated, the possibility of confusing her unstable mental condition or temporary lapse of judgmental power bordering on temporary Insanity cannot be completely ruled out which the appellant attributed as coming under the influence of invisible power, for the purpose of giving a benefit of doubt about the non-existence of "intention.

It is not common for rustic persons to be aware of various mental disorders/illnesses such as schizophrenia, bipolar disorder, that may temporarily Impair the mental condition of an Individual. More often than not, these disorders are unrecognised and remain untreated as it may be difficult to identify the symptoms and they do not seek proper and timely medical intervention, resulting In such medical/mental conditions which can be misinterpreted or confused with spells or Influence of Invisible forces based on superstitions.

In the present case, we have also noted that no particulars have been mentioned about the nature of the "Invisible Influence" and as such it can be purely in the realm of speculation that this "Invisible influence" may be a symptom of such mental

conditions referred to above. However, in the light of the strange, bizarre and inexplicable behaviour of the appellant, there is no other plausible explanation that could be attached to her conduct in the given circumstances, other than to infer that she was under certain impaired mental condition which the appellant described as being under the influence of Invisible power.

58. However, In spite of the above discussed circumstances and other evidence on record, In the absence of any conclusive medical evidence with regards to the mental condition of the appellant, we are of the opinion that it may not be enough to extend the benefit of exception as encapsulated in Section 84 IPC so as to acquit the appellant In the present case.

Nevertheless, in our view, the circumstances are enough to cast a shadow of doubt about the existence of the Intention of the appellant to commit the crime in the present case. We are, thus, satisfied that in the present case "Intention of causing death" cannot be said to have proved."

51. The Hon'ble Apex Court has emphaised that only for the reason that the appellant could not convey himself in a legally and understandable expression of his mental condition to prove the legal insanity, the same could not be completely ignored. The invisible influence is infact a speculation, which can be read either from physical symptoms or from the behaviour of such a person.

52. We may also refer here the law rendered in the case of ***State of Gujarat Vs Bhalchandra Laxmishankar Dave,*** reported in ***(2021)2 SCC 735***, wherein, it is settled that High Court being the first appellate court, is required to re-appreciate the entire

evidence on record and also the reasoning given by trial court, failing which the same may affect the prosecution or the accused.

53. Relevant Paragraph nos. 5.1, 5.2,5.3 & 6 of the Judgment are quoted hereinunder :-

"5.1. On perusal of the impugned judgment and order of acquittal passed by the High Court, we find that, as such, there is no reappreciation of the entire evidence on record in detail while acquitting the respondent-accused. The High Court has only made general observations on the depositions of the witnesses examined. However, there is no reappreciation of the entire evidence on record in detail, which ought to have been done by the High Court while dealing with the judgment and order of conviction passed by the learned trial court.

5.2. The High Court ought to have appreciated that it was dealing with the first appeal against the order of conviction passed by the learned trial court. Being the first appellate court, the High Court was required to reappreciate the entire evidence on record and also the reasoning given by the learned trial court while convicting the accused. Non-reappreciation of the evidence on record may affect the case of either the prosecution or even the accused. Being the first appellate court, the High Court ought to have re-appreciated the entire evidence on record without any limitation, which might be there while dealing with an appeal against the order of acquittal passed by the learned trial court.

5.3. An appellate court while dealing with an appeal against acquittal passed by the learned trial court, is required to bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be

innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. Therefore, while dealing with the cases of acquittal by the trial court, the appellate court would have certain limitations. Even in the case of acquittal passed by the learned trial court, in Umedbhai Jadavbhai v. State of Gujarat, it is observed and held by this Court that: (SCC p. 233, para 10)

"10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence."

The High Court would be justified against an acquittal passed by the learned trial court even on reappreciation of the entire evidence independently and come to its own conclusion that acquittal is perverse and manifestly erroneous. However, so far as the appeal against the order of conviction is concerned, there are no such restrictions and the court of appeal has wide powers of appreciation of evidence and the High Court has to reappreciate the entire evidence on record being a the first appellate court. Keeping in mind that once the learned trial court has convicted there shall not be presumption of innocence as would be there in the case of acquittal.

6. On perusal of the impugned judgment and order of acquittal passed by the High Court, we find that the High Court decision is based on totally erroneous view of law by ignoring the settled legal position. The approach of the High Court in dealing/non-dealing with the evidence was patently illegal leading to grave miscarriage of justice. Therefore, we are of the firm opinione that the impugned judgment and order passed by the High Court acquitting the respondent-accused without adverting to the reasons given by the learned trial court while convicting the

accused and without reappreciating the entire evidence on record in detail cannot be sustained and the same deserves to be quashed and set aside. We are of the opinion that therefore the matter deserves to be remanded to the High Court to consider and deal with the appeal afresh in accordance with law and on its own merits keeping in mind the observations made hereinabove. The High Court ought to have appreciated that it was dealing with the offences under the Prevention of Corruption Act which offences are against the society. And therefore the High Court ought to have been more careful and ought to have gone in detail. We do not approve the manner in which the High Court has dealt with the appeal."

54. So far as the present case is concerned, apparently, the trial court has failed to consider the evidences adduced by the appellant, though, the same are on record. Further the statement of the appellant recorded under section 313 of the Cr.P.C., has been utterly ignored by the learned trial court.

55. It is long settled law that in a criminal trial, the purpose of examining the accused person under section 313 of the Cr.P.C. is for fulfilling the requirement of principle of natural justice i.e. Audi Altram Partem and by virtue of this proceeding, the accused furnishes the explanation regarding the incriminating circumstances and this is also one of the important factor to complete the chain of circumstances. The proceeding under section 313 of the Cr.P.C. is not only a formality, but, it is a valuable right of defence of an accused and therefore, the failure to put the material circumstances to the accused, amounts to serious irregularity, which

vitiates the trial, more particularly, when it is shown that the prejudice has been caused to the accused.

56. In the instant matter, the manner in which the learned trial court has considered the statement of the appellant recorded under section 313 of the Cr.P.C., is not in tune with the requirement of the said provision. In fact, the questions which have been asked, are not only in most mechnical manner, but, the explanation/reply given by the appellant more particularly, in respect of his mental sickness, has not been dealt with by the learned trial court. Further, the medical prescriptions, which are on record, regarding the mental impairment of the appellant, strongly supports the statement of the appellant recorded under section 313 of the Cr.P.C., but, that too, has been ignored by the learned trial court.

57. The overall examination of the evidences including the statements of the prosecution witnesses, is enough to establish that the appellant was suffering with certain impaired mental condition and thus, the instant matter obviously, falls in a category of general exception.

58. As discussed above, we do find that the learned trial court has failed to appreciate the evidence led by the defence in it’s right perspective including the statement of the appellant recorded under section 313 of the Cr.P.C. which apparently caused prejudice to the

appellant and thus, learned trial court has erred in convicting and sentencing the appellant. Therefore, the impugned Judgment and order passed by the learned trial court is not sustainable in the eyes of law and the same is liable to be set aside.

59. In view of the aforesaid, the present Criminal Appeal is **allowed.**

60. Consequently, the impugned Judgment and Order dated 24-12-2005 passed by the learned Additional Sessions Judge/Fast Track Court No. 1, Bahraich in Sessions Trial No. 229 of 2002, tilted as 'State Vs Rajesh @ Sajesh Twari', arising out of Case Crime No. 216 of 2002, under section 302 of the I.P.C., Police Station-Fakharpur, District-Bahraich, is hereby set aside.

61. The accused-appellant, Rajesh @ Sajesh Tewari is in jail. Let the accused-appellant, **Rajesh @ Sajesh Tewari,** be released from jail forthwith, if he is not wanted in any other case.

62. In compliance of provisions of section 437 A of the Cr.P.C., it is directed that the accused-appellant, Rajesh @ Sajesh Tewari, shall furnish a personal bond and two sureties each in the like amount to the satisfaction of the court concerned within two weeks of his release from jail.

63. Let the record of trial court alonwith the copy of this order be transmitted forthwith to learned trial court concerned for necessary information and compliance.

Order Date :- 29-05-2025

AKS