



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRA No. 9/2017
c/w
CONF No. 2/2016

Reserved on :- 29.05.2025
Pronounced on :- 01.07.2025

Maan Chand S/o Sh. Firangu R/o
Morha Baggar, Village Jakhed,
Tehsil Ramnagar, District
Udhampur A/p District Jail
Udhampur.

.... Petitioner/Appellant(s)

Through:- Mr. Anmol Sharma, Advocate

V/s

State through Public Prosecutor
Principal Sessions Judge,
Udhampur.

.....Respondent(s)

Through:- Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

Per:- Shahzad Azeem, J

1. The appellant (hereinafter referred to as “**accused**”) has thrown challenge to the judgment and order dated, 17.12.2015, respectively, passed by the learned Principal Sessions Judge, Udhampur (hereinafter referred to as “**the trial Court**”), whereby the accused has been convicted



for commission of offence under Section 302 RPC and sentenced to undergo rigorous imprisonment for life and a fine of Rs. 6,000/- for committing murder of his wife, namely, Kanta Devi (hereinafter referred to as “**deceased**”) and in default of payment of fine, the accused shall undergo imprisonment for six months. The sentence of life imprisonment was kept subject to confirmation by the High Court. Now, by a common judgment, we propose to adjudicate the appeal as well as reference made by the trial Court in terms of Section 374 of J&K Code of Criminal Procedure.

FACTUAL MATRIX

2. The investigation into the alleged commission of crime sprang out of written report, EXT-P1 lodged by PW-1 Des Raj (real brother of deceased) accompanied by PW-2 Ravi Kumar in the wee hours of 27.10.2012, precisely at 6.10 a.m. It was alleged in the report by PW-1, EXT-P1 that on 26.10.2012, he and his sister (deceased) were sleeping in a room, when at about 2 a.m, on, 27.10.2012, his brother-in-law (jija), who was sleeping in other room, woke up and with a criminal intention to commit the murder of the deceased, armed with wooden staff (Dalath) and sickle (Darath) started assaulting deceased. The accused also pinned him down with foot and took out kerosene oil from the lamp (Diya-Glass bottle) and set the bedding of the deceased on fire with lamp. On finding opportunity, PW-1 Des Raj said to have escaped and informed, PW-2



Ravi Kumar and PW- Rajinder Kumar (witness given up by the prosecution), who were sleeping in their rooms. By the time, he accompanied by PW-2 Ravi Kumar and PW- Rajinder Kumar had come back, the accused after committing murder of the deceased and setting her bedding on fire fled from the spot.

3. Accordingly, the initial report lodged by PW-1 Des Raj vide EXT-P1 was entered in the Daily Diary of police post, Dudu, vide No. 17 and on its dispatch to Police Station, Basantgarh, a formal case being FIR No. 30/2012 under Section 302 RPC and 4/25 Arms Act was registered against the accused on 27.10.2012 at 9.10 a.m and investigation entrusted to PW-13 Vikram Kumar (SI).

4. PW-13 Vikram Kumar proceeded to the spot and the dead body of the deceased and place of occurrence were got photographed, site plan was prepared, blood stained and unstained clay, lamp (glass bottle), its cap, matchbox and burnt quilt, were seized and sealed. On the spot, Autopsy conducted on the body of deceased. Burnt wearing apparels of the deceased were seized and the blood samples obtained. The statement of witnesses under Section 161 and 164-A, Cr.PC, were also got recorded. The accused was arrested and on the basis of his disclosure statement, the weapon of offence i.e. blood stained wooden staff and sickle were recovered and seized. The finger prints from the sickle were lifted and preserved. Other codal formalities were also completed.



5. From the material collected during investigation, it came to fore that the accused and deceased after marriage started residing in the house of Chaman Lal and the couple was blessed with a baby, who at the time of occurrence was 2 ½ years old. The accused invariably used to stay away from home to work as a laborer in Katra and deceased had been staying at home along with PW-1 Des Raj (her brother). The prosecution story further proceeds on the premise that the accused was suspicious that in his absence, deceased had developed extra-marital relations. The accused alleged to have also warned and counseled the deceased, but deceased did not mend her ways.

6. Further prosecution case is that at the time of occurrence, the deceased was sleeping in a room along with her baby and PW-1 Des Raj, whereas, the accused was sleeping in another room, who was on the look out and in the meanwhile, deceased said to have went out of her room, but when returned after a considerable long time, the accused inquired from the deceased the reason for going out during late night, the deceased did not reply. Thereupon, the accused with a criminal intention to commit her murder indiscriminately assaulted the deceased with wooden staff (Bamboo Stick) and sickle and thereafter, accused said to have taken out kerosene oil from the lamp (Diya) and poured on deceased and on her bedding and set the same ablaze. This way committed the murder of the deceased.



7. Accordingly, on completion of investigation final Police report was presented against the accused in the Court, formal charge under Section 302 RPC drawn up, who denied the charge and claimed to be tried.

8. The prosecution has examined 13 witnesses out of 18 witnesses. It is noteworthy that though the name of finger print expert, PW-12 Hakim Abdul Rashid was not figuring in the witness list, but during trial, the Court has recorded his statement on 17.05.2013.

9. When the accused was examined under Section 342 Cr.PC, so as to explain the circumstances appearing in the evidence against him, the accused while denying the veracity of the prosecution case submitted that a false case has been foisted on him and further put forth the explanation, note whereof shall be taken at appropriate stage. However, despite opportunity was granted to the accused, he did not lead the evidence.

10. The trial Court on appreciation of the evidence and material produced during the trial convicted and sentenced the accused vide judgment and order impugned.

11. It is noteworthy that there is variation in numbering of prosecution witnesses given in impugned judgment and police challan, therefore, we shall be referring the prosecution witnesses as per the numbering assigned in the impugned judgment and rest of the witnesses who were either not examined or given up shall be referred by name.



SUBMISSIONS

12. Learned counsel for the appellant vehemently argued that there are contradictions in the testimonies of the prosecution witnesses regarding situs of occurrence, the manner of conducting post-mortem and recovery of alleged weapon of offence, so much so, the prosecution case totally runs contrary to the evidence led during trial, however, the trial Court did not appreciate the evidence on record and banked upon the solitary statement of PW-1 Des Raj, who was not capable of perceiving the relevant facts in its real perspective.

13. Learned counsel submits that the motive of the alleged murder of the deceased being not proved during the trial, as PW-2 Ravi Kumar and PW-3 Poli Devi have negated the motive of the crime as alleged by the prosecution. It is also submitted that the prosecution story is doubtful on the ground that PW-2 Ravi Kumar was examined, but his real brother PW-Rajinder Kumar (given up by the prosecution) was dropped for no reason, despite cited as eye witness.

14. As per learned counsel PW-Mansa Ram, who was attesting witness to alleged disclosure statement as well as recovery memo of the alleged weapon of offences was also given up by the prosecution. Learned counsel for the appellant further submits that the trial Court has not considered the aspect that the prosecution has embossed three identical seals with impression "B" for making the seizures which were made on



27.10.2012, 28.10.2012 and 29.10.2012 respectively. He would further argue that the three Fard Superdnamas i.e. EXT-P9/I to EXT-P9/III bearing the impression of identical seals, made the entire seizure highly suspicious and the alleged recoveries doubtful as the seals used by the I/O were identical and handed over to PW-6 Tilak Raj thrice on three different occasions who is a police personnel.

15. It is also canvassed that the trial Court has ignored the aspect that the seizure i.e. kerosene lamp, quilt, match sticks etc were not shown to the PW-1 Des Raj in the Court. Therefore, prayed for the acquittal of appellant.

16. Per contra, Mr. Raman Sharma, learned AAG submits that the trial Court after proper appreciation of evidence and on sound principles of law, rightly convicted and sentenced the accused. According to learned counsel, once PW-1 Des Raj had deposed vividly the entire occurrence and withstood the cross-examination, in that event, the minor discrepancies here or there lose the significance. He would further argue that there is nothing on record from where, it can be inferred that by securing the conviction of the accused, the prosecution witnesses may draw any benefit nor any reason is put forth indicating that the accused is falsely implicated, therefore, no fault can be found with the order and judgment of the trial Court. Learned counsel further submits that once ocular account and recovery of weapon of offence which are further



corroborated by the expert evidence points towards the guilty of the accused, there cannot be anything short of conviction, which has been rightly handed down by the learned trial Court. While summing up his arguments, learned counsel for the respondents submits that the prosecution remained successful in bringing home the guilt against the accused beyond all shadow of doubt by proving presence of the accused at the time and place of occurrence and also motive behind such gruesome act, therefore, no fault can be found with the impugned judgment and order. Thus, prays for the dismissal of appeal.

ANALYSIS

17. There is no denial to the fact that the trial Court had discussed the points under consideration and also justified its reasoning by the case law. It is equally noteworthy that the trial Court while coming to the conclusion that the prosecution remained successful in bringing home the guilt against the accused mainly relied upon the testimony of PW-1 Des Raj. Though discrepancies, contradictions, improvements and other shortcoming pointed out by the defence, but the trial Court was of the opinion that all such loopholes, did not go to the root of the prosecution case, rather are expected from the truthful witnesses. The trial Court is of the firm view that the testimony of PW-1 Des Raj is of such sterling quality that the contradictions or discrepancies if any, in the testimonies of the witnesses, recovery of weapon of offence, expert evidence, search or



seizure, initial report, forwarding of First information to the Magistrate etc. need not to be given much credence, particularly when by securing the conviction of the accused, the prosecution witnesses in no manner would draw any benefit.

18. Now, let us examine the legality of impugned order and judgment to find out how far prosecution remained successful in bringing home the guilt against the accused.

19. Undeniably, the prosecution version regarding the alleged murder of the deceased hinges on the short point that the deceased had developed extra marital relation in the absence of the accused, who used to stay away from home to work as Laborer at Katra. In the estimation of the prosecution, the stubborn behaviour of the deceased led to the crime, in that, the accused alleged to have advised and counseled the deceased to desist from indulging in extra marital relation, but because the deceased said to have a headstrong attitude, therefore, continued to have relations outside the marriage and on that fateful night the accused finding the deceased in the intervening night of 26th /27th October, 2012, absent from the room for considerable time and on her return, could not offer any plausible reason, assaulted her with wooden staff and sickle followed by setting her on fire by pouring kerosene oil which led to the death of the deceased. In nutshell, there was specific motive attributed for the alleged murder of the deceased, as per the prosecution case.



20. On taking into consideration, the prosecution case, holistically, one would find that during the time of occurrence, i.e. at about 2 A.M, on 27.10.12, when accused allegedly assaulted the deceased and poured kerosene oil before setting her on fire only PW-1 Des Raj was present in the room where deceased was sleeping along with PW-1 Des Raj and 2 ½ year baby. This seems to be the reason why the trial Court had laid much emphasis on the evidence of PW-1 Des Raj and whatever deposed by him is taken as final word, ignoring shortcomings on the ground that same would fade in view of the testimony of the ocular evidence of PW-1 Des Raj, who happens to be the brother of the deceased and as such had no reason to falsely implicate the accused.

21. Let us at first examine the veracity of occurrence and find out that as to whether prosecution remained successful in proving it beyond all shadow of doubt.

OCCURRENCE

22. PW-1 Des Raj, who was the real brother of deceased and is the star witness of the prosecution story testified to the initial report EXT-P1 wherein, the witness specifically mentioned that the accused poured the kerosene oil on the bedding of the deceased and set the same on fire, however, he escaped from the spot and informed PW-2 Ravi Kumar and PW-Rajinder Kumar and when they had come back at the place of occurrence, the accused after committing murder of the deceased fled



from the spot. To the contrary, when PW-1 Des Raj entered in the witness box, he deposed that at the time of occurrence, on hearing hues and cries of the deceased that she has been killed, he woke up and he saw the accused was assaulting the deceased with wooden staff and sickle. The accused threatened him and pinned him down with foot. The accused took out kerosene oil from the lamp and poured on the deceased and she was set on fire. It is noteworthy that it has also come in the evidence of PW-1 Des Raj that when he along with PW-2 Ravi Kumar and PW-Rajinder Kumar had come back in the room where occurrence took place, the accused fled from the spot on their arrival taking sickle and wooden staff. According to PW-1 Des Raj, he had mentioned in the initial report EXT-P1 that the baby of the deceased had sustained burn injuries on his back, however, on going through EXT-P1, one would not find any such recital therein.

23. There are inherent contradictions and improvements in the testimony of PW-1 Des Raj. The factum of burn injuries, sustained by the baby of the deceased, though according to PW-1 Des Raj has been got mentioned by him in the initial report, EXT-P1, but same did not find its mention in the said report. The initial report, EXT-P1 is immediate and first version of the occurrence, wherein, it has been mentioned that the bedding of the deceased was set on fire after pouring the kerosene oil from the lamp, however, when PW-1 Des Raj entered in the witness box,



he deposed that the accused poured kerosene oil on the deceased near the door and assaulted him, therefore, there is contradiction between the two versions and the manner of commission of offence as sought to be projected by the prosecution.

24. If we take the first and immediate version of PW-1 Des Raj as true, then the deceased was set on fire while she was lying on the bed and if the version given in the Court is taken as true, then the deceased was near the door where the kerosene oil was poured on her and she was set on fire.

25. There is another important aspect with regard to initial report, EXT-P1 that it has been specifically mentioned in the initial report, EXT-P1 that by the time, PW-2 Ravi Kumar, PW-Rajinder Kumar and PW-1 Des Raj had come back in the room, where alleged occurrence took place, the accused fled from the spot after setting the bedding of the deceased on fire. However, to the contrary it has come in the evidence of PW-1 Des Raj that PW-2 Ravi Kumar and PW- Rajinder Kumar on being informed about the occurrence by him and when they arrived at the place of occurrence, the accused was there wielding sickle and wooden staff and on sensing their presence, he ran away from the spot. Although there is also contradiction that whether the accused was wielding sickle or wooden staff or while fleeing from the spot, he took the weapon of offence or left behind, but same shall be taken note of hereinafter.



26. Therefore, there are contradictions and improvements insofar as initial report, EXT-P1 and testimonies of PW-1 Des Raj and PW-2 Ravi Kumar are concerned on the point; that manner in which deceased was allegedly set on fire; burn injuries sustained by the baby and after commission of alleged offence fleeing of accused from the spot.

27. Next point falls for consideration is, whether it is possible to inflict multiple internal and external injuries of different dimensions by the accused and no resistance is offered or struggle made by the deceased or PW-1 Des Raj. According to PW-1 Des Raj, at the time of occurrence, the accused was assaulting the deceased with wooden staff and sickle and she was also set on fire. He was pinned down by the deceased with foot. Meanwhile, he went to PW-2 Ravi Kumar and PW-Rajinder Kumar and informed them about the occurrence. It has come in the testimony of PW-2 Ravi Kumar that during the night of 26.10.12 at 2 °clock, PW-1 Des Raj knocked at his window and informed him that the accused has killed his sister (deceased). From the testimonies of PW-1 Des Raj and PW-2 Ravi Kumar, it can be noticed that when PW-1 Des Raj escaped from the place of occurrence to inform PW-2 Ravi Kumar and PW-Rajinder Kumar about the occurrence by that time, the deceased was dead, therefore, going by the case of the prosecution and the testimony of PW-1 Des Raj, it appears that the accused assaulted the deceased with wooden staff and sickle at the same time he poured kerosene oil on the deceased, inasmuch



as, surprisingly, as the version of PW-1 Des Raj goes, during the time of occurrence, which lasted about 2-3 hours, the accused pinned down the PW-1 Des Raj with foot. When PW-1 Des Raj was cross-examined on this aspect, he deposed that the accused was wielding in one hand sickle, and in the other hand, wooden staff, but again rectified his statement and deposed that the accused was holding the deceased with one hand and in the other hand sickle.

28. As per the prosecution story, the accused alone was the author of this crime, therefore, it appears improbable to assault the deceased with two weapons of offence and simultaneously to pour the kerosene oil on the deceased, particularly, when PW-1 Des Raj who was shown 17 years old as per EXT-P1 was also present. On this point, our conscious do not allow us to buy the version of the prosecution witnesses, because if any person would be subjected to such a gruesome assault then in all probability, he would raise hue and cry, shall struggle and try to escape, particularly when there is also support of real brother, but to the contrary offering no resistance, making no struggle for 2-3 hours, till the deceased died, cast a doubt on the prosecution story, as it runs in diametrically opposite direction to the natural human behaviour.

29. It has categorically come in the testimony of PW-2 Ravi Kumar that the accused and deceased were residing in the house of his uncle, where he too is putting up and they all were housed under one roof. The witness



further deposed that the distance between his house (Room) and the room of the deceased was about 200 feet, however, the witness rectified that the total length of house is 200 feet, meaning thereby, the accused and the deceased, as well as PW-2 Ravi Kumar and PW-Rajinder Kumar were putting up in the different rooms in one house, having common roof and the length of the house was about 200 feet, that is what deposed by PW-2 Ravi Kumar.

30. At the same time, it has come in the testimony of PW-13 Vikram Kumar (I/O) that at the time of occurrence, the accused and the deceased had been sleeping in separate rooms having distance of about 25-30 feet and this factum that deceased and the accused sleeping separately was also find support from the testimony of PW-1 Des Raj.

31. PW-1 Des Raj and PW-2 Ravi Kumar deposed that the accused was not sleeping in the room of the deceased and there was a distance of about 25-30 feet between the rooms of accused and deceased, therefore, it seems improbable, rather fraught with risk to venture into such gruesome act, particularly when under the same roof, PW-1 Des Raj, deceased, PW-2 Ravi Kumar, PW-Rajinder Kumar and their families were also putting up. Further doubt is cast, when PW-1 Des Raj deposed that the accused assaulted the deceased for about 2-3 hours and during such time, accused pinned him down with foot, which is highly improbable and unconvincing that one person assaulted with more than one weapons for 2-3 hours,



without attracting the attention of any neighbour or other occupant of the house till they are informed by PW-1. The conduct of PW-1 Des Raj is also doubtful in view of his conflicting depositions that the accused did not beat him nor he speak to the accused, and to the contrary also deposed that for 2-3 hours when the accused was assaulting the deceased, he was pinned down with foot. In the same breath, PW-1 Des Raj also deposed that he stated before the Presiding Officer (statement recorded under 164-A Cr.PC) that he asked the accused as to why he is assaulting her, on which the accused replied that he shall kill him also. It has also come in the testimony of PW-1 Des Raj that when he woke up on hearing hue and cry of the deceased, he was threatened by the accused and then he was pinned down with the foot. It renders the conduct of PW-1 Des Raj doubtful and also manner of commission of crime becomes highly suspicious beyond normal human conduct expected in such a situation. This also casts doubt on the occurrence and the manner of the commission of crime as alleged by the prosecution.

32. PW-1 Des Raj deposed that during the night of occurrence, the electricity was on, but normally, they switch off the lights. PW-1 Des Raj further deposed that after pouring kerosene oil on the deceased, she was set on fire with the burning lamp. On this point, even PW-13 Vikram Kumar (I/O) went rather one step ahead and deposed that it has come in his investigation that at the time of occurrence, accused poured kerosene



oil from the lamp and set her on fire by igniting matchstick. On the point of setting of the deceased on fire, there are mutual and inherent contradictions between the testimonies of PW-1 Des Raj, and PW-13 Vikram Kumar (I/o). At first instance, it does not sound to the reason that if electricity was on, in that event, there was no question of lighting of kerosene oil lamp and furthermore, if the testimony of PW-13 Vikram Kumar (I/O) is to be believed, then it belies the testimony of PW-1 Des Raj who happens to be the eye witness and deposed that accused set the deceased on fire with the burning lamp. Therefore, the extent of credence attached to the testimony of PW-1 Des Raj was unwarranted as credibility of PW-1 is shaken by his conduct and further belied by the prosecution witnesses.

33. The manner in which the deceased said to have set on fire and the place where occurrence took place becomes doubtful in view of the foregoing circumstances as pointed out by us which cast doubt on the prosecution story and this fact is further strengthened when two conflicting versions of PW-1 Des Raj and PW-13 Vikram Kumar (I/O) are considered in this perspective. PW-1 Des Raj deposed that the accused poured kerosene oil on the deceased and she was set on fire near the door, however, when PW-13 Vikram Kumar is specifically confronted on this point, he deposed that when he entered in the room, where occurrence took place, the dead body was lying at the left side, but near the door, he



found no burn marks or blackened spots. Therefore, on this account also, the testimony of PW-1 Des Raj is belied, because if the version of PW-1 Des Raj would be taken as truthful, then, definitely, near the door, PW-13 Vikram Kumar (I/O) would have spotted fire marks and the blackened spot, therefore, the manner of commission of offence is belied none other than, the ocular witness himself. The trial Court erred in not properly evaluating the discrepancies, contradictions, improvements, etc as are visible in the prosecution case on the simple ground that version of PW-1 Des Raj, the eye witness is of sterling quality, which we do not find.

34. The credibility of the testimony of PW-1 can further be gauged, as it has come in his cross-examination that at the night of occurrence, he did not remember when they slept as they do not own a watch, but in the same breath, he deposed that while going to Dudu (Police Post), he saw time on mobile phone. Therefore, it is highly improbable that at the time of occurrence, PW-1 Des Raj was not knowing the time when they slept. This fact assumes relevance in view of the surrounding circumstances and thus casts doubt regarding the manner, the time and the place of occurrence, as alleged by the prosecution.

35. Since we have taken note of the fact that the accused, deceased, PW-1 Des Raj, PW-2 Ravi Kumar, PW-Rajinder Kumar and their families were putting up in one house and under one roof, therefore, it was expected rather it was but natural that after PW-1 Des Raj informed PW-2



Ravi Kumar and PW-Rajinder Kumar about the occurrence, the other family members too would have rushed to the room where occurrence took place. However, to the contrary, PW-1 Des Raj, in cross-examination specifically deposed that only PW-2 Ravi Kumar, PW-Rajinder Kumar had come at the place of occurrence, but the wife of PW-2 Ravi Kumar did not come there. This fact also cast doubt on the prosecution story that only two family members i.e. PW-2 Ravi Kumar and PW-Rajinder Kumar had come, even after knowing about such gruesome murder, none from the family members either arrived at the time of occurrence or associated during investigation, so much so, the prosecution had given up PW-Rajinder Kumar, who was cited as eye witness, therefore, absence of other family members of PW-2 and also non-examination of such important witnesses also casts doubt and puts dent in the prosecution case.

36. Now, on switching over to other aspects of the occurrence, as the prosecution story goes, PW-13 Vikram Kumar (I/O) on receiving the information regarding the occurrence on, 27.10.12 proceeded to the spot along with police team, including PW-5 Dalbir Singh (HC Photographer), PW-HC Kabla Singh (given up by the prosecution) PW-6 Tilak Raj and two lady police personnel and PW-7 Arif Choudhary (FSL Expert) and after completing partial codal formalities, returned to Udhampur on, 28.10.12 and again on 29.10.12, went to village Jageth in search of the accused. Therefore, as per the testimony of PW-13 Vikram Kumar (I/O),



he along with police team proceeded to the spot on 27.10.12 and during night, stayed there and returned to Udhampur on 28.10.12 and whereafter, in the next day i.e. on 29.10.12, went to the village in search of the accused. PW-6 Tilak Raj deposed that after completing the formalities at the place of occurrence on 27.10.12, they returned to Udhampur and again went there on 28.10.12, and returned back. He further deposed that on 29.10.12 again they proceeded to the spot. At the same time, it has come in the testimony of PW-5 Dalbir Singh (Photographer) that he along with PW-13 Vikram Kumar (I/O), FSL, and police team, went to the spot from Udhampur. While contradicting the testimonies of PW-5 Dalbir Singh and PW-13 Vikram Kumar (I/O), the FSL expert, PW-7 Arif Choudhary has denied the suggestion that he went to the spot along with PW-13 Vikram Kumar (I/O). The witness also contradicted his earlier statement made under Section 161 Cr.PC where, it was stated that he went to Village Jageth Baggard along with PW-13 Vikram Kumar (I/O). This has also come in the testimony of PW-7 Arif Choudhary that he went to the spot with driver and photographer (PW-5 Dalbir Singh). The witness has denied the suggestion that he and PW-5 Dalbir Singh did not go on the spot and they have completed all the formalities in the police station itself. PW-5 Dalbir Singh (photographer) deposed that he took the photographs of the place of occurrence and also at the time of conducting of post-mortem on 28.10.12, he photographed the dead body. When this witness



was confronted with the photographs of the occurrence, including that of dead body of the deceased, which are Mark-1 to Mark-24. None of such photographs bear the date, 28.10.12 i.e when the post-mortem on the dead body was said to have been conducted. The witness justified this omission by deposing that it is omitted because of mistake.

37. The presence of prosecution witnesses at the time, day and place of occurrence further becomes doubtful when we go through the testimony of fingerprint expert, PW-12 Hakeem Abdul Rashid. PW-12 Hakeem Abdul Rashid (fingerprint expert) deposed that questioned prints Q1 and Q2 were found identical with the specimen prints S1 and S4. However, witness further deposed that it is not possible to get clear finger impressions like Q1 and Q2 from sickle (Dharath). During his re-examination, the witness has stated that seized Dharat (sickle) has rough surface so clear impressions like Q1 and Q2 cannot be lifted from such surface.

38. These all circumstances when taken collectively, cast doubt on the presence of the prosecution witnesses right from the day and time of visit to the place of occurrence by PW-13 Vikram Kumar, PW-5 Dalbir Singh (photographer), PW-7 Arif Choudhary (FSL Expert), other posse of cops and resultant, the respective investigation done and expert opinion rendered by them. The prosecution also failed to prove the fingerprints allegedly lifted from the weapon of offence at the time of recovery as in



this regard, a specific question was put to PW-7 Arif Choudhary who deposed that the fingerprints developed at the time of recovery not shown to him in the Court.

RECOVERY OF WEAPON OF OFFENCE

39. As per the prosecution story, the recovery of weapons of offence i.e. wooden staff (Dalath) and sickle (Dharath) was made pursuant to the disclosure of accused on 29.10.12 that he has killed the deceased with wooden staff and sickle and same has been concealed by him in the field of PW-2 Ravi Kumar under a tree in the grass and same was recovered at the instance of accused.

40. If the testimony of PW-1 Des Raj is to be believed then, the weapon of offence would not have been recovered at the instance of the accused for the reason that PW-1 Des Raj specifically deposed in his cross-examination that while fleeing from the spot, accused left the sickle and wooden staff. This is not the solitary evidence which casts doubt as to what has been recovered was concealed by the accused, in that, PW-2 Ravi Kumar deposed that during the night of occurrence, when he along with PW-Rajinder Kumar and PW-1 Des Raj reached on the spot, the accused was present in the verandah wielding sickle without handle and thereafter, he fled from the spot. If the testimony of PW-2 Ravi Kumar is to be believed then, only accused was wielding sickle, therefore, question of recovery of wooden staff did not arise. In any case, there is



contradiction between the nature of weapon of offence allegedly used in the crime and furthermore, whether while fleeing from the spot accused fled leaving weapons of offence or fled with weapons of offence is also not certain, rather it is marred by the contradictions.

41. Now, coming to the actual recovery allegedly made at instance of accused. Two witnesses i.e. PW-4 Ramesh Chander (Sarpanch) and PW-Mansa Ram, Chowkidar (given up by the prosecution) were cited as witnesses to the disclosure and recovery. PW-Mansa Ra (Chowkidar) was given up, however, PW-4 Ramesh Chander deposed that on the disclosure of the accused, the weapons of offence were recovered from the spot on the identification of the accused and PW-7 Arif Choudhary (FSL expert) lifted the finger prints and handed over to the police. PW-7 Arif Choudhary when entered in the witness box deposed that a wooden staff and sickle without handle were concealed under the tree in the grass and on the identification of the accused were recovered. There were blood stains on the wooden staff, but no finger prints were found on it. However, on sprinkling finger print powder on the sickle, two finger prints were visible, which were lifted, sealed and preserved and handed over to PW-13 Vikram Kumar (I/O). The witness when shown the sickle in the Court, he deposed that today also, blood stains are not seen on the sickle.



42. To the contrary, PW-4 Ramesh Chander who is witness to the recovery and is Sarpanch of the area deposed that the seized sickle and wooden staff have the blood stains but wooden staff shown to him in the Court did not contain blood stains, however, the sickle still contains the blood stains. Therefore, there is a contradiction between the testimony of PW-4 Ramesh Chander and PW-7 Arif Choudhary. If PW-7 Arif Choudhary is to be believed, then only wooden staff had the blood stains, but sickle did not contain blood stains. Even when the sickle was shown to PW-7 Arif Choudhary in the Court, he deposed that the blood stains are not visible on the sickle even today. However, to the contrary, PW-4 Ramesh Chander deposed that the seized sickle and wooden staff were containing the blood stains, however, the wooden staff shown to the witness in the Court did not contain the blood stains, but sickle contains the blood stains.

43. Therefore, according to the witnesses to the recovery, there is a contradiction as to what was recovered as per the prosecution case, whether same was produced in the Court. On the point of recovery of weapon of offence allegedly used in the crime, there is another flaw, in that, PW-12 Hakeem Abdul Rashid (fingerprint expert) deposed that Q1 and Q2 were found identical with the specimens prints S1 and S4 of the suspect, however, witness in cross-examination and also in re-examination, specifically deposed that it is not possible to get clear finger



impressions from the seized weapon of offence (Dharat) shown to the witness in the Court, as Dharat has rough surface so clear impressions like Q1 and Q2 cannot be lifted from such surface.

44. On the point of use of alleged weapons of offence, there is contradiction right from the place of occurrence, to the alleged recovery made, their examination by the expert and thus, the manner and the place of occurrence as alleged by the prosecution, when pitched against the alleged weapons of offence allegedly used in the crime, same becomes doubtful, as same suffers from the contradictions, discrepancies, inasmuch as, what was allegedly used during crime and was recovered had been belied by the expert witness.

45. At this stage, it is important to note that when accused was examined under Section 342 Cr.PC, so as to explain the circumstances appearing in the evidence against him, on the point of alleged disclosure and recovery at his instance, witness stated that he did not make any disclosure rather, PW-7 Arif Choudhary (FSL expert) had taken his finger prints at 4-5 places at Police Post Dudu but the trial Court completely overlooked his statement.

MOTIVE

46. The motive for the alleged murder of deceased was her alleged extra marital relation and despite the accused said to have counseled and



advised the deceased, she did not budge from such acts, which led to the killing of the deceased at the hands of the accused.

47. On going through the testimonies of PW-1 Des Raj, who was residing with deceased, one would find that the witness was categorical in deposing that the accused and the deceased were not fighting with each other and further PW-2 Ravi Kumar also deposed that he never saw the accused and the deceased fighting. PW-2 Ravi Kumar further went on to depose that deceased was a chaste lady and he did not tell the police that deceased was unchaste nor informed that the accused was suspicious about the purity of the deceased. There is no iota of whisper in respect of the chastity of deceased on account of her alleged extra marital relation. However, PW-13 Vikram Kumar (I/O) deposed that it has come in his investigation that accused and deceased were quarreling, which led to the murder of the deceased at the hands of the accused by pouring kerosene oil and setting her on fire with the match stick, however, none of the prosecution witness have supported this version of PW-13 Vikram Kumar, therefore, alleged motive attributed for the alleged murder of the deceased is also not proved by the prosecution.

MEDICAL OPINION

48. The deceased died during the intervening night of 26/27th October, 2012, however, post-mortem was conducted on, 28.10.12 in the house where the accused and the deceased were putting up. The reason offered



for not conducting the postmortem in the hospital (health centre) by PW-9 Dr. Din Mohd. (Medical Officer) was due to the protest of the public, however, to the contrary, PW-13 Vikram Kumar (I/O) deposed that the post-mortem on the dead body of the deceased was conducted by PW-9 Dr. Din Mohd on 28.10.12 at 7.30 a.m as she had already died and thus, the question of taking the dead body of the deceased to the dispensary did not arise. The witness further deposed that he did not know as to whether before him, the police had made any attempt to shift the dead body to the Primary Health Centre (PHC).

49. As to what were those exceptional circumstances under which the post-mortem was conducted in the private house and the dead body was not shifted to the nearest public health centre PHC is not coming forth and what has been deposed by PW-9 Dr. Din Mohd. is in contradiction to the testimony of PW-13 Vikram Kumar (I/O). The post-mortem report, EXT-P17 was issued on, 20.11.12 i.e. after about 22 days of the conducting of the post-mortem and when PW-9 Dr. Din Mohd. was specifically asked about the preservation of any rough note of post-mortem examination held on, 28.10.12, he could not produce any proof, therefore, whatever has been observed and opined in the post-mortem examination report, EXT-P17, becomes doubtful as the ordinary human memory goes, it is not possible to remember the dimensions of the alleged injuries as have been



shown in the report total numbering around 15 internal and external injuries.

50. In this regard, be it noted that when the Doctor was specifically asked that as to whether any note was prepared or preserved, the witness could not offer any plausible reason and deposed that the post-mortem report was not prepared by him on the spot, however, the findings were recorded on the spot and final post-mortem report was prepared after consulting Parikh's Medical Jurisprudence. The witness deposed that rough findings noted on the spot have not been seen by him.

51. When the contradictory reasons for conducting postmortem in private house given by PW-9 Dr. Din Mohd and PW-13 Vikram Kumar (I/O) are read in conjunction with the testimony of PW-5 Dalbir Singh (Photographer), the post-mortem report further becomes doubtful, in that, PW-5 Dalbir Singh deposed that at the time of post-mortem, he had photographed the dead body, but when he was confronted with the photographs, Mark-1 to Mark-24, none of the photographs contain the date 28.10.12, i.e., when the post-mortem was conducted, however, PW-5 Dalbir Singh (Photographer) justified the omission to note down the date on the post-mortem photographs said to have been taken at the time of autopsy on 28.10.12 due to mistake.

52. As to whether the nature of injuries pointed out by the Doctor during the post-mortem were possible by the weapon of offence allegedly



used in the crime is also not coming forth and there appears to be abdication of duty cast on the prosecution to show the weapon to the Doctor, so as to confirm the injuries noted by him are possible by such weapon of offence. There is nothing on record to show that any attempt has been made in this regard either by the prosecution or by the Court, therefore, it may not be wrong to say the genesis of the crime had been suppressed and the prosecution story becomes highly doubtful in view of this omission on the part of the prosecution.

53. Be it noted that the Doctor has observed during post-mortem, lacerated wounds, contusions, abrasions, etc. however, one of the alleged weapons of offence used in the crime was sickle, which is a sharp edged weapon, but no incised or stabbed wound was found, which is also indicative of the fact that genesis of the crime was suppressed by the prosecution and the manner in which the alleged crime alleged to have been committed does not conform to the dock evidence tendered by the prosecution witnesses, particularly the expert witnesses.

54. PW-9 Dr. Din Mohd. deposed that at the time of autopsy the clothes of the deceased were dried, however, in sharp contradiction, PW-2 Ravi Kumar deposed that he douse the flames with 5/6 buckets of water, therefore, it appears that scene of crime was either tinkered with or the manner of commission of crime was completely suppressed, which casts doubt on the veracity of the prosecution case.



ARREST OF ACCUSED

55. The manner in which the custody of the accused has been taken by the police is itself doubtful and further reflects on the veracity of the prosecution case. As per the prosecution case, the accused was arrested on 29.10.12. In this regard, PW-13 Vikram Kumar (I/O) deposed that on 29.10.12, they made search of accused and in the afternoon on the identification of PW-2 Ravi Kumar, accused was arrested at 3.15 from the road at Jakhed Baggard.

56. To the contrary, PW-3 Poli Devi, sister of the deceased deposed that when she heard about the occurrence, she reached there in the morning at 5 am and police had arrived at 9 am. The accused was in the room, who was handcuffed by the police. The statement of the accused made under Section 342 Cr.PC assumes importance, when accused was asked inter-alia that at the time of occurrence, he was found wielding weapon of offence and after setting the deceased on fire, fled from the spot. The accused while denying the allegations stated inter-alia that police had arrested him on 27th in the morning at 9 am.

57. PW-13 Vikram Kumar (I/O) was specifically confronted with the statement of PW-3 Poli Devi and asked that it has come in her statement that on the day of occurrence, the accused was arrested however, PW-13 Vikram Kumar (I/O) pleaded ignorance in this regard and replied that he



did not investigate this aspect on the spot nor police of police post Dudu handed over the accused to him.

58. If accused was arrested in the morning of 27.10.12, then question arises why PW-13 Vikram Kumar shown his arrest in the afternoon of 29.10.12. Regarding arrest of accused, there is admission on the part of the accused in statement made under Section 342 Cr.PC, which finds support from the testimony of PW-3 Poli Devi. All these discrepancies and contradictions are pointer to the fact that during the intervening period, prosecution had got enough time to manipulate and fudge the case and this view of ours is strengthened by the delay caused in sending special report to the Ilaqa Magistrate.

DELAY IN SENDING SPECIAL REPORT

59. As per the prosecution story, the initial report EXT-P1 was lodged in Police Post Dudu, on 27.10.12 at 6.10 am and when same was transmitted to the police station, Basantgarh, a formal case being FIR No. 30/2012 under Section 302 RPC and 4/25 Arms Act was registered against the accused on 27.10.12 at 9.10 am and investigation commenced. However, the special report was received by the Magistrate on 29.10.12 at 11.15 am. The learned PP while justifying two days' delay in sending the special report submitted that 27.10.12, was Saturday and 28.10.12 was Sunday and this report was submitted on 29.10.12 i.e. on Monday, as it has also been noted in the impugned judgment by the trial Court.



60. PW-13 Vikram Kumar (I/O) was specifically confronted on this point, who deposed that the case was registered on, 27.10.12 at 9.10 am, however, neither with authenticity he can say when special report was dispatched from the Police Station, Basantgarh nor he had inquired from the SHO concerned in this regard. Therefore, the justification during arguments given by learned PP that because of holidays, the special report could not be dispatched promptly is liable to be rejected, particularly, when the prosecution case is full of improvements, contradictions, discrepancies etc.

61. It is not a case where the prosecution case is free from notable improvements or discrepancies, but on every point, there are loopholes which put dent in the prosecution case, therefore, in this regard, sending of special report belatedly to the Illaqa Magistrate assumes importance.

62. In this regard, Hon'ble Supreme Court has categorically held that not sending the report due to public holidays is irrelevant and the police is duty bound to send it immediately without any fail, therefore, justification given that it could not be sent because of public holiday lies in the teeth of the law laid down by the Hon'ble Supreme Court in case, **State of Rajasthan Vs. Teja Singh and Ors; AIR 2001 SC 990**, wherein para 4 held thus:-

“4. We have examined the evidence of the three eye-witnesses as also that of Iqbal Singh (PW-10) the Investigating Officer. We have also perused the evidence of Ram Pratap, Sarpanch (DW-1) and we do not find any reason to differ with the finding of the High Court while



sitting as the first Court of appeal on facts, had every right to re-appreciate the evidence. In our opinion, the High Court, in that process, has not committed any error. As a matter of fact, the explanation put forth by the learned counsel in regard to the delay in the FIR reaching the Court is not tenable because assuming that there were some Court holidays that cannot be a ground for the delay in the FIR reaching the Magistrate, because requirement of law is that the FIR should reach the concerned Magistrate without any undue delay. We are of the opinion that the explanation given by the prosecution regarding the delay in the FIR reaching the Magistrate is neither convincing nor acceptable.”

EXAMINATION OF ACCUSED AND HIS EXPLANATION

UNDER SECTION 342 CR.PC.

63. The accused specifically stated in his statement under Section 342 Cr.PC that he was arrested on, 27.10.12, which is further strengthened by the testimony of PW-3 Poli Devi, the sister of the deceased. At the same time, accused also stated in his statement under Section 342 Cr.PC that his fingerprints were taken by PW-7 Arif Choudhary at 4-5 places in the police post Dudu. Fingerprint expert-PW 12 Hakeem Abdul Rashid deposed that lifted fingerprints were clear without any distortion, however, it is not possible to get clear finger impressions from the seized weapon of offence (Dharat) as same is having rough surface. Furthermore, there is also contradiction between the testimony of PW-7 Arif Choudhary and PW-4 Ramesh Chander as to which of the weapons of offence recovered was containing blood stains. However, the trial Court did not take into consideration, the statement of the accused made under Section 342 Cr.PC which was a valuable piece of defence and thus assumes importance in view of attending circumstances inasmuch as it is a



constitutional right to a fair trial under Article 21 of the Constitution. In this regard, Hon'ble Supreme Court in case, **Reena Hazarika Vs. State of Assam**; AIR 2018 SC 5361 held as follows:-

16. Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313 (1) (b) Cr.P.C. the Court is duty bound under Section 313 (4) Cr.P.C. to consider the same. The mere use of the word 'may' cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing.

17. Unfortunately neither Trial Court not the High Court considered it necessary to take notice of, much less discuss or observe with regard to the aforesaid defence by the appellant under Section 313 Cr.P.C. to either accept or reject it. The defence taken cannot be said to be irrelevant, illogical or fanciful in the entirety of the facts and the nature of other evidence available as discussed hereinbefore. The complete non consideration thereof has clearly caused prejudice to the appellant. Unlike the prosecution, the accused is not required to establish the defence beyond all reasonable doubt. The accused has only to raise doubts on a preponderance of probability as observed in *Hate Singh Bhagat Singh vs. State of Madhya Bharat*, AIR 1953 SC 468 observing as follows:

"26. We have examined the evidence at length in this case, not because it is our desire to depart from our usual practice of declining to assess the evidence in



an appeal here, but because there has been in this case a departure from the rule that when an accused person but for the word a reasonable defence which is likely to be true,..... then the burden on the other side becomes all the heavier because a reasonable and probable story likely to be true friend pitted against AV and vacillating case is bound to raise a reasonable doubts of which the accused must get the benefit....”

A similar view is expressed in *M. Abbas vs. State of Kerala*, (2001) 10 SCC 103 as follows:

“10. ... On the other hand, the explanation given by the appellant both during the cross examination of prosecution witnesses and in his own statement recorded under Section 313 CrPC is quite plausible. Where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities....”

Now, let us take a survey of case law on the points under consideration.

64. Since there are variations and improvements in the initial report EXT-P1 and its maker; PW-1 Des Raj; there is also delay in sending the special report, the Doctor was not shown the weapon of offence, so as to give his opinion as to whether nature of injuries are possible with the alleged weapon of offence; postmortem report was prepared after 22 days without any note prepared during postmortem and the prosecution has given up eye witness, PW-Rajinder Kumar, who as per PW-1 Des Raj arrived along with PW-2 Ravi Kumar at the place of occurrence immediately on being informed by him. Another prosecution witness, PW- Parsu was also given up, so much so, PW-Mansa Ram (Chowkidar) who was witness to confession, recovery and finger print was also given up by the prosecution without any plausible justification.



65. While dealing these aspects as we have noted, Hon'ble Supreme Court in **Ishwar Singh and ors. Vs. State of U.P 1976 CriLJ1883**, in para 9 held:-

“9. We have pointed out that the trial Court in convicting the appellants overlooked certain significant features of the case, namely, the inordinate and unexplained delay in despatching the first information report to the Magistrate; the difference in the account given by the prosecution witnesses and as appearing from the first information report of the occurrence; the absence of any statement in the first information report as to the injuries received by some of accused, and the non-examination of material witnesses. The High Court in affirming the Judgment of the trial Court also failed to advert to these circumstances. We do not therefore think that the case against the appellants has been proved beyond reasonable doubt. The appeals are accordingly allowed and the Order of conviction and the sentences passed on the appellants are set aside We direct that the appellants be set at liberty forthwith.”

66. When the recovery does not inspire confidence as to the manner and with regard to its nexus to the alleged offence, the Court is required to give benefit of doubt to the accused as discussed at length that the recovery of weapon of offence is marred with contradictions and is doubtful, therefore, in this regard, the law laid down by the Hon'ble Supreme Court in **Bijender alias Mandar Vs. State of Haryana; AIR 2022 Supreme Court 466. Para No. 17** is noteworthy, which reads as under:-

“17. Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the Court ought to stretch the benefit of doubt to the accused. Its nearly three centuries old cardinal principle of criminal jurisprudence that “it is better that ten guilty persons escape, than that one innocent suffer”. The doctrine of extending benefit



of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that “the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent”.

67. On the point of requirement that the attention of Doctor has to be drawn to the weapon of offence so as to confirm the nature of injuries, Hon’ble Supreme Court in **Amar Singh Vs. State (NCT of Delhi); (2020) 19 SCC 165 in para Nos. 30 & 31**, held as under:-

30. While emphasizing the importance of eliciting the opinion of medical witness in such circumstances this Court in the case of Kartarey and Ors. V/s State of U.P. has observed as under SCC p. 177, para 26 “We take this opportunity of emphasizing the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim, more specifically on this point, for the proper administration of justice particularly in a case where injuries found are forensically of the same species, example stab wound, and the problem before of the Court is whether all or any those injuries could be caused with one or more than one weapon. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration of the course of justice”.

31. The same has been again asserted by this Court in Ishwar Singh V/s State of U.P. by observing as under:-

“26....It is the duty of the prosecution, and no less of the Court, to see that the alleged weapons of the offence, if available, is shown to the medical witness and is opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so sometimes, cause aberration of the course of justice.”* On the basis of the evidence on record it is difficult to say whether the injury to the deceased was caused by the knife with a broken tip which was ceased. These variations relate to vital parts of the prosecution case, and cannot be dismissed as minor discrepancies. In such a case, the evidence of the eye witness “cannot be accepted at its face value”,



as observed by this Court in *Mitter Sen v. State of U.P.*

68. We have delved on the point, as to whether it is possible to inflict multiple external and internal injuries of different dimensions by the accused alone and no resistance is offered or struggle made by the deceased or for that matter by the PW-1 Des Raj. Furthermore, this point assumes importance in the wake of the testimony of PW-1 Des Raj that the accused alleged to have assaulted the deceased for 2-3 hours simultaneously with two weapons of offence and during this period also, accused had pinned him down with foot and deceased was set on fire by the burning lamp. Be it noted that the prosecution failed to show the Doctor that weapons of offence, so as to confirm the nature of injuries and so also during the trial, the trial Court overlooked this aspect of the matter. Hon'ble Supreme Court while dealing with somewhat similar facts and circumstances in **Amar Singh Vs. State (NCT of Delhi); (2020) 19 SCC 165** in para 27 held as under:-

“27. Thus, there are total 15 injuries inflicted by three assailants, two having hockey sticks and one knife as per prosecution story. Parminder Singh PW-1 emphatically stated that whole incident barely lasted five minutes. It would be practically impossible to inflict 15 injuries of the type by three assailants simultaneously attacking the deceased within a short span of 5 minutes particularly when the victim being a normal healthy person naturally must have offered resistance. Inflicting 15 injuries on the body of the deceased by three accused persons would require a considerable amount of time. This itself suggest that three accused had sufficient time at their disposal to conduct the crime and the entire incident could not have taken place within five minutes as stated by eye witness Parminder Singh PW-1. This fact coupled with the fact that two brothers of the deceased remained a mute spectator when the third brother was being assaulted is



clear indication of the fact that PW-1 Parminder Singh was not present on the spot and not an eye witness of the incident.”

Similarly, in the case on hand, for 2-3 hours, during the commission of crime, PW-1 Des Raj against all probabilities remained mute spectator which casts doubt on the presence of PW-1 on the spot.

69. Once, the Court has come to a finding that prosecution has suppressed the genesis and origin of the occurrence, and also failed to explain the injuries on the person of the accused, in that event, accused is entitled to the benefit of doubt. Hon’ble Supreme Court in case **Bhagwan Sahai and anr. Vs. State of Rajasthan; 2016 CriLJ 3154**, while dealing on the point that once, it is shown that the prosecution has suppressed the genesis and origin of occurrence, the benefit of doubt has to be given to the accused what is held in Para No. 8 is noteworthy:-

“8. The aforesaid view of the High Court is devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants. The appellants can legitimately claim right to use force once they saw their parents being assaulted and when actually it has been shown that due to such assault and injury their father subsequently died. In the given facts, 1976 (4) SCC 394 Page 5 CrI.A. No.416 of 2016 @ SLP(CrI.)2301/2016 adverse inference must be drawn against the prosecution for not offering any explanation much less a plausible one. Drawing of such adverse inference is given a go-bye in the case of free fight mainly because the occurrence in that case may take place at different spots and in such a manner that a witness may not reasonably be expected to see and therefore explain the injuries sustained by the defence party. This is not the factual situation in the present case.”



CONCLUSION

70. While summing up, we arrived to the conclusion that the prosecution case suffers from the following notable shortcomings:-

- a) There is variation in the initial report EXT-P1 and its maker PW-1 Des Raj.
- b) There are contradictions regarding type of weapons of offence used; the manner in which the deceased was assaulted and the nature of injuries caused by such weapons.
- c) The recovery of alleged weapon of offence is marred by the discrepancies and contradictions.
- d) There is unexplained delay in dispatching the special report to the Illaqa Magistrate.
- e) The post-mortem was conducted in the private house, the Doctor, PW-9 and the Investigating Officer, PW-13 have put forth contradictory reasons for the same.
- f) The Doctor was not shown the weapon of offence so as to confirm the possibility of nature of injuries sustained by the deceased, with such weapons.
- g) Doctor issued the post-mortem report after 22 days and failed to show as on what basis, he prepared the report after such a long gap between the actual conducting of the post-mortem and



issuance of the report, particularly how he memorized the alleged multiple wounds of different dimensions.

- h) There is a contradiction as to the day and time of arrest of the accused.
- i) There are also contradictions as to the day and time of visiting of police officers and expert witnesses to the place of occurrence, which casts a doubt on the veracity of investigation.
- j) The prosecution has also withheld the important witnesses PW-Rajinder Kumar (eye witness) PW-Mansa Ram (Chowkidar), and PW- Parsu without any plausible reason.
- k) Prosecution has attributed specific motive for the crime, but failed to prove it.

71. Though we are not relying on this point, but same is boggling our mind, therefore, just placing it on record, in that, we are pained to note that during entire gamut of the discussion, the trial Court somewhere missed to take note as to what happened to the little baby who said to have sustained burn injuries on the back, but neither provided medical treatment nor a slight attempt is made that if accused was the author of the crime and was present on the spot why he did not make effort to evacuate his 2 ½ years old son from the raging flames, till the PW-2 Ravi Kumar arrived and evacuated the toddler to his room. In this regard, we are reminded of the great philosopher **Aristotle**, whose philosophy emphasizes natural human relationship and virtues. In his work *Nicomachean Ethics*, Aristotle discusses the deep love parents have for their children, which aligns with the idea that a father would risk his life to save his child:



“Parents love their children as themselves, for their issue or like another self, coming from them.” (Nicomachean Ethics, Book VIII, 1155 a).

This quote underscores the intrinsic, self sacrificial bond that makes it nearly unimaginable for a father not to act to evacuate his 2 ½ years old from a fire as an extension of his own being. The trial Courts’ failure to address this aspect in its judgment overlooks the natural and powerful paternal instinct.

72. In the wake of above discussed contradictions, improbabilities, discrepancies, improvements, conflicting opinion of the experts, etc, the justification of the trial Court that the testimony of PW-1 Des Raj is of sterling nature do not inspire confidence, as it loses sheen and withers away and is overshadowed by doubt and consequently, also renders the prosecution case unworthy of reliance.

73. Once, we arrived to the conclusion that the prosecution story is not free from reasonable doubt, in that event, as per the settled proposition of law the benefit of doubt belonged to the accused, which should have been granted by the trial Court. In this regard, the observation of the Hon’ble Supreme Court in, **Narendra Singh and anr. Vs. State of M.P; AIR 2004 Supreme Court 3249 in para Nos. 30 and 33** assumes importance:-

“30. It is now well-settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however, grave may be cannot take place of a proof. It is equally well-settled that there is a long distance between 'may be' and 'must be'.

33. We, thus, having regard to the post mortem report, are of the opinion that the cause of death of Bimlabai although is shrouded in mystery but benefit



thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.”

74. For the foregoing reasons, we are unable to concur with the findings of the trial Court, particularly when on every point under consideration we have noted deficiencies and flaws, which are staring at the heavy burden cast on the prosecution to prove the guilt beyond all shadow of doubt so as to rebut the presumption of innocence, which is a cornerstone of criminal jurisprudence, therefore, accused cannot be sent behind the bars by curtailing his liberty on the basis of such fragile prosecution evidence.

75. In view of the aforesaid, while giving benefit of doubt, we allow this appeal and set aside the judgment of the trial Court. The appellant is acquitted of the charge. He shall be set at liberty forthwith, if not required in any other case.

76. For the reasons, reference for confirmation of the sentence is declined and the CONF No. 2/2016 is rejected.

77. The record of the trial Court be sent down forthwith.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

JAMMU
01.07.2025
Tarun/PS

Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No