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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

B.R. GAVAI; J., PAMIDIGHANTAM SRI NARASIMHA; J., ARAVIND KUMAR; J.

January 04, 2024

CRIMINAL APPEAL NO. 163 of 2010

DARSHAN SINGH *versus* STATE OF PUNJAB

Code of Criminal Procedure, 1973; Section 313 - Statement recorded u/s. 313 CrPC cannot form the sole basis of conviction. Mere omission to take a specific plea by accused when examined u/s 313 CrPC, is not enough to denude him of his right if the same can be made out otherwise. (Para 33)

Code of Criminal Procedure, 19783; Section 161 - If the PWs had failed to mention in their statements about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance. (Para 26)

Evidence Law - illiterate witness - Appreciation of evidence led by such a witness has to be treated differently from other kinds of witnesses. It cannot be subjected to a hyper-technical inquiry and much emphasis ought not to be given to imprecise details that may have been brought out in the evidence. The evidence of a rustic/illiterate witness must not be disregarded if there were to be certain minor contradictions or inconsistencies in the deposition. (Para 27)

Evidence Law - illiterate witness - However, the testimony of an illiterate witness suffers not merely from technical imperfections, there are glaring omissions and improvements that have been brought out in the cross-examination, which cannot be attributed to the illiteracy of the individual deposition. If there were minor contradictions and inconsistencies, that could have been ignored since the recollection of exact details as to location and time can be attributed to the lack of literacy. (Para 28)

For Appellant(s) Mr. Abhimanyu Tewari, AOR Ms. Eliza Bar, Adv. Mr. Siddhant Saroha, Adv. Mr. Praveer Singh, Adv. Mr. Manav Bhalla, Adv. Mr. Sidhant Awasthy, Adv.

For Respondent(s) Ms. Rooh-e-hina Dua, AOR Mr. Harshit Khanduja, Adv. Mr. Umang Mehta, Adv.

J U D G M E N T

Aravind Kumar, J.

1. This appeal by special leave arises out of judgment and order dated 23.07.2009 passed in Criminal Appeal No.593-DB of 2000 by the High Court of Punjab & Haryana. The High Court has upheld the order of conviction and sentence, as against Darshan Singh (the appellant) and has allowed the appeal of Rani Kaur (Accused No. 2), thereby acquitting her of all charges. The State of Punjab has not challenged the acquittal of Rani Kaur by filing any special leave petition. It is in this background that Darshan Singh had sought special leave to appeal before us and leave came to be granted by order dated 22.01.2010.

Case of the Prosecution:

2. The facts can be summed up in brief as follows:

The deceased, Amrik Kaur was married to Darshan Singh, the appellant, some time in 1988. The marriage was arranged through Melo Kaur (PW-3), the cousin sister of the deceased. The prosecution alleges that their marital relationship was strained owing largely to the fact that Darshan Singh had developed an illicit partnership with Rani Kaur (A2). Several relatives had prevailed on the appellant to put an end to his relationship with Rani Kaur, but to no avail. The illicit relationship between Darshan Singh and Rani Kaur is said to have lasted for at least three years before the fateful day. It is the case of the prosecution that on the intervening night of 18.05.1999 and 19.05.1999, Darshan Singh and Rani Kaur, with the motive of eliminating the deceased, administered poison and intentionally caused the death of Amrik Kaur.

3. On these allegations, Darshan Singh and Rani Kaur were prosecuted for charges under Section 302 r/w Section 34 IPC. The Trial Court convicted both the accused persons for the offence under Section 302 r/w Section 34 and sentenced them to undergo imprisonment for life.

Findings of the Trial Court and High Court:

4. The Trial Court has concluded that it was a case of homicide and not suicide. It has found that the appellant had a strong motive to commit the murder of his wife. It further held that the appellant and Rani Kaur were present in the house on the intervening night of 18.05.1999 and 19.05.1999 and therefore, the burden lay on them to explain as to '*how the body of Amrik Kaur who was alive on the night of 18.05.1999 turned into a corpse*' the next morning. The Court has completely disbelieved the theory of suicide sought to be advanced on behalf of appellant. It was noted that merely because there were no injuries on the body of the deceased, that by itself would not obviate the possibility of forceful administration of the poisonous substance. On the basis of the above circumstances taken together, the Trial Court held that the prosecution has proved its case beyond reasonable doubt against the appellant and Rani Kaur.

5. In appeal, the High Court has agreed with the findings of the Trial Court in so far as the appellant is concerned and has acquitted Rani Kaur by extending her the benefit of doubt. It has found that there is no other evidence except the testimony of PW3 and PW4, to prove the presence of Rani Kaur on the intervening night of 18.05.1999 and 19.05.1999 at the appellant's house.

ARGUMENTS OF MR. ABHIMANYU TEWARI, COUNSEL APPEARING FOR APPELLANT:

6. PW3, Melo Kaur, is not a reliable witness. The presence of the appellant, Darshan Singh, at the house on the intervening night of 18.05.1999 and 19.05.1999 is sought to be established based on her testimony. She has made several improvements in her version, and her testimony suffers from several contradictions, and therefore, it is not safe to rely on such a witnesses' uncorroborated testimony. It would be prejudicial to the appellant to rely on only a part of her testimony and exclude the rest. If her testimony is ignored in toto, there is no other evidence to establish the key circumstance of appellant's presence at the spot of crime.

6.1 That aluminium phosphide is rather impossible to administer in a deceitful manner owing to its pungent smell and odour. No injury marks have been found on the deceased, which further establishes that there could not have been any forceful administration of the poison. Therefore, it is submitted that it is nothing but a case of suicide, the driving force for which, was the confrontation with Melo Kaur. It is the appellants' case that Amrik Kaur was having an illicit affair with Melo Kaur's husband, Gurmel Singh PW4, and

embarrassed with her sister finding out, she self-administered the poisonous substance and committed suicide. Counsel has submitted judgments to support the proposition that aluminium phosphide has a pungent smell similar to garlic.

6.2 Reliance has been placed on **Jaipal V. State of Haryana – (2003) 1 SCC 169** wherein the Apex Court discussed the nature of aluminium phosphide. The relevant paragraphs have been extracted below for reference:

*“16. According to Modi, symptoms and signs of poisoning by aluminium phosphide are similar to poisoning by zinc phosphide (p. 197, *ibid.*). The chief symptoms after the administration of zinc phosphide are a vacant look, frequent vomiting with retching, tremors and drowsiness followed by respiratory distress at death. Zinc phosphide acts as a slow poison and is decomposed by hydrochloric acid in the stomach with the liberation of phosphine which acts as a respiratory poison. Being a very fine powder zinc phosphide adheres firmly to the crypts in the mucous membrane of the stomach, and a very small quantity only in the stomach even after vomiting is sufficient to cause death by slow absorption.*

*17. Phosphine released from zinc phosphide (rat poison) and from aluminium phosphide, is mainly used as a fumigant to control insects and rodents in foodgrains and fields. Liberated from the metal phosphides by the action of water or acids, gaseous phosphine exerts more potent pesticidal action, for it penetrates to all areas otherwise inaccessible for pesticide application. Pathological findings from phosphine inhalation are pulmonary hyperaemia and oedema. It causes both fatty degeneration and necrosis of liver (p. 174, *ibid.*).*

18. Our attention was invited, as was done in the High Court and the trial court, to a paper entitled “Toxicology — Acute Aluminium Phosphide Poisoning in Northern India” written by Dr Mitra Basu and Prof. S.B. Siwach, Head, Department of Medicine, Postgraduate Institute of Medical Sciences, Rohtak and published in Current Medical Journal, Vol. I, No. 5, July 1995. The authenticity of this article has not been doubted by the High Court nor questioned either in the High Court or in this Court. The learned authors have noticed the aluminium phosphide having emerged as a major health problem in northern India when these cases first started coming in 1984 and hardly any literature being available earlier on this malady. In Postgraduate Institute of Medical Sciences, Rohtak about 2000 cases were reported which were all suicidal.

19. We may briefly sum up the opinion of the learned authors from their published paper. Phosphine gas (active ingredient of ALP) causes sudden cardiovascular collapse; most patients die of shock, cardiac arrhythmia, acidosis and adult respiratory distress syndrome (ARDS). Aluminium phosphide is available in the form of chalky-white tablets. When these tablets are taken out of the sealed container, they come in contact with atmospheric moisture and the chemical reaction takes place liberating Phosphine gas (PH₃) which is the active ingredient of ALP. This gas is highly toxic and effectively kills all insects and thus preserves the stored grains. When these tablets are swallowed, the chemical reaction is accelerated by the presence of hydrochloric acid in the stomach and within minutes phosphine gas dissipates and spreads into the whole body. The gas is highly toxic and damages almost every organ but maximal damage is caused to heart and lungs. Sudden cardiovascular collapse is the hallmark of acute poisoning. Patients come with fast, thready or impalpable arterial pulses, unrecordable or low blood pressure and icy-cold skin. Somehow these patients remain conscious till the end and continue to pass urine despite unrecordable blood pressure. Vomiting is a prominent feature associated with epigastric burning sensation. The patients will be smelling foul (garlic-like) from their breath and vomitus. Many of them will die within a few hours. Those who survive for some time will show elevated jugular venous pressure, may develop tender hepatomegaly and still later adult respiratory distress syndrome (ARDS), renal shutdown and in a very few cases, toxic hepatic jaundice. The active ingredient of ALP is phosphine gas which causes extensive tissue damage. A spot clinical diagnosis is possible in majority of cases of ALP poisoning. However, ALP on account of its very pungent smell (which can drive out all inmates from the house if left open) cannot be taken accidentally.”

6.3 It was also argued that the courts below have failed to give sufficient weight to the evidence led on behalf of the defence, in particular, the testimony of DW3 and DW4.

6.4 Lastly, it was argued that Rani Kaur (A2) having been extended benefit of doubt, it was rather anomalous to exclude such benefit to A1- the appellant, when the case of the prosecution was that both of them were present at the scene of crime.

Arguments of Mr. Prateek Chaddha, learned counsel on behalf of State of Punjab:

7. Melo Kaur was an illiterate person who cannot be expected to be aware of the intricacies of law and cross examination and therefore, it was rather natural for minor inconsistencies to creep into the testimony of such a witness. The Trial Court has rightly appreciated her testimony by excluding the uncorroborated parts from the corroborated parts of her testimony. In that sense, the Trial Court has separated the chaff from the grain, as is expected to be done when it has to appreciate the evidence of a partly reliable and partly unreliable witness. Moreover, the accused himself has never denied his presence at the scene of crime. In his statement recorded under Section 313 of Cr.P.C., he has admitted his presence. This, coupled with the testimony of PW3, 4 and 5, is sufficient to prove the presence of the accused at the spot of crime.

7.1 The case rests on circumstantial evidence, the prosecution has proved the circumstances from which an inference of guilt is sought to be drawn, cogently and convincingly. The circumstances relied on include — (1) Motive; (2) Presence of the appellant at the scene of crime; (3) Cause of Death: By Poisoning (4) Opportunity to administer poison; (5) Conduct (6) False explanation in 313 Statement.

7.2 He has further relied on the principle laid down in *Trimukh Maroti Kirkan v. State of Maharashtra*¹ to contend that the degree of evidence needed to prove the case resting on circumstantial evidence in the given facts cannot be as high as is normally the case. In view of Section 106 of the Evidence Act, the appellant was under a burden to explain the circumstances leading to the death of the deceased. Merely remaining quiet or offering a false explanation would provide an additional link in the chain of circumstances to make it complete. Remaining quiet, or offering a false explanation would therefore provide an additional link in the chain of circumstances to make it complete. He has also sought to distinguish the cases relied on behalf of the appellant.

ANALYSIS AND FINDINGS:

8. We have heard the learned Counsel for the appellant and respondent and perused the materials on record.

9. There is no eye-witness to the incident. The case of the prosecution rests on circumstantial evidence. The normal approach in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion, that within all human probability, the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence. [See *Sharad Birdhichand Sarda v. State of Maharashtra*²]

¹ (2006) 10 SCC 681

² (1984) 4 SCC 116

10. Let us, therefore, examine whether the prosecution had proved beyond reasonable doubt, the entire chain of circumstances, not leaving any link missing for the appellant to escape from the clutches of law. The circumstances which are said to have been proved on behalf of the prosecution is as follows:

1. Motive
2. Presence at the spot
3. False explanation in 313 statement
4. Death by Poisoning – Doctor’s opinion on cause of death
5. Conduct of the Appellant
6. Opportunity to administer poison.

11. According to the case of the prosecution, the illicit relationship that existed between Darshan Singh and Rani Kaur served as the key motive for them to jointly eliminate the deceased. The fact that they were in an illicit relationship has been sufficiently proved from the testimony of PW 2, PW 3 and PW 4. This circumstance, therefore, has been cogently established.

12. The most important circumstance, among all, must be the circumstance of the appellant and Rani Kaur having been present in the appellant’s house on the intervening night of 18.05.99 and 19.05.99 and they having been seen leaving the house in the early hours of the day. For, the proof of presence has the effect of triggering into operation, Section 106 of the Evidence Act and the principle laid down in the case of **Trimukh Maroti Kirkan v. State of Maharashtra**. Even the circumstance that the appellant had the ‘opportunity’ to administer poison was strongly linked to aspect of proving the presence of the appellant and Rani Kaur in the appellants house.

13. In **Trimukh’s** case, it has been held:

i. *“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.....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**”*

14. In **Trimukh (supra)**, this Court has pointed out that there are two important consequences that play out when an offence is said to have taken place in the privacy of a house, where the accused is said to have been present. Firstly, the standard of proof expected to prove such a case based on circumstantial evidence is lesser than other cases of circumstantial evidence. Secondly, the appellant would be under a duty to explain as to the circumstances that led to the death of the deceased. In that sense, there is a limited shifting of the onus of proof. If he remains quiet or offers a false explanation, then such a response would become an additional link in the chain of circumstances.

15. Both the Courts below have in fact applied the principle referred to in Trimukh’s case. Their presence having been held to be proved, the Court relied on Section 106 of

the Evidence Act and shifted the onus of proof on the accused to explain the circumstances which led to the unnatural death of the deceased.

16. Whereas the Trial Court found both the accused guilty, the High Court has confirmed the order of conviction only against the appellant and extended benefit of doubt to Rani Kaur. The appellant having failed to give a proper and believable explanation was, in fact, used as an additional link in the chain of circumstances. The proof of presence in that sense triggered the two consequences as laid down in Trimukh's case (supra)

17. In this case, the presence was sought to be proved by the prosecution on the basis of the testimony of PW-3, PW-4, PW-5 and the statements of the accused at the 313 stage. The Courts below had also relied on the testimony of PW 3 and PW 4 to conclude that the appellant was present in the house. Therefore, it becomes necessary to carefully evaluate this circumstance, given the consequences that flow from proof of this circumstance.

18. PW-3 has deposed that her husband, Gurmel Singh (PW-4), on his return home from work around 8 pm on 18.05.99, had informed her that he saw the appellant along with Rani Kaur present in the appellant's house. He further informed her that it would not be appropriate to visit their house at that time since he anticipated the possibility of a flare up among the family members. He told her that they could talk to the appellant in the morning. PW-3 stated that she visited the house of the appellant in the morning at around 4:45 am, only to find her sister lying dead. She states that she saw the appellant and Rani Kaur present in the house. She further states that both of them pushed her aside and left in a jeep, belonging to the appellant. She then states that she called her husband (PW-4) to the spot.

19. In the cross examination of PW-3 on behalf of the appellant, several omissions have been brought on record by drawing her attention to her previous statement given to the police under Section 161 CrPC. For instance, it has come out in the evidence that PW-3 had omitted to state in her Section 161 statement that: (a) her husband had informed her that he saw the appellant and Rani Kaur in the appellant's house when he was returning back home from work around 8 pm; (b) she had seen the appellant and Rani Kaur in the early hours on 19.05.99 in the appellant's house and they pushed her aside before escaping in a jeep. (c) her husband had advised her not to visit the deceased in the night. It had been specifically suggested to her that she was falsely deposing and that the appellant was being falsely implicated on account of him having strained relations with PW-4, the husband of PW3.

20. In the cross examination of PW-3 on behalf of Rani Kaur, it was elicited that PW-3 had personally witnessed the appellant and Rani Kaur putting poison in the mouth of the deceased. This, according to PW-3, was seen by her through the chinks of the door.

21. PW-4 has stated that he met the appellant and Rani Kaur on his way home, while he was returning from work around 7.00 PM on 18.05.99. He stated that both of them went to the appellant's house. He informed his wife that it would not be appropriate to visit their house at this time since there was a possibility of a quarrel arising between Amrik Kaur and her husband, the appellant, since he had brought Rani Kaur home. Instead, he asked her to go and visit her sister on the next morning. In the morning, around 5.30 am, his wife left to visit her sister at the appellant's house after serving tea to him and his children. On having received a message from his wife, he set about to reach the appellant's house and found Amrik Kaur lying dead and his wife, weeping and wailing.

22. Similarly, in the cross examination of PW-4, it has been brought on record that PW-4 had omitted to state the following aspects in his statement recorded under Section 161 Cr.P.C. before the police – (a) that PW-4 had seen the appellant and Rani Kaur entering the house of the appellant in a jeep; (b) PW-4 had told PW-3 not to visit the appellant's house since they were intoxicated and there was a strong possibility of some dispute arising. (c) PW-4's statement that PW-3 had left for the appellant's house at 5.00 am in the morning on 19.05.99 after serving him tea. It has been specifically suggested to this witness that he had strained relations with the appellant, and owing to this fact, he has falsely implicated the appellant. It was further suggested that on account of the quarrel that occurred in the night on 18.05.99, the deceased had committed suicide by taking poison.

23. PW 5 is an independent witness having no relationship with any of the persons involved, either as an accused or as witnesses, in this incident. He stated that on the morning of 19.05.99, at about 6.00 am, he had gone to answer the call of nature. At that time, he states that he saw the appellant and Rani Kaur were going in a jeep to Hiro Kalan and that jeep was covered with black cloth. He then returned to the bus stop and found a lot of persons having gathered and there, he heard the news that the appellant had murdered his wife.

24. PW-5's deposition that he had heard from persons at the bus stop that the appellant had murdered his wife, was an omission since he had not stated as such in his statement before the police. It has been elicited from him that the jeep came from behind and then passed by his side. It has been further elicited that the black cloth which was used to cover the jeep was opened on both sides.

25. In the face of the above evidence on record, can it be said that the presence of the appellant and Rani Kaur in the appellant's house in the intervening night of 18.05.99 and 19.05.99, has been firmly and cogently established? According to us, the answer must be in the negative. There are several omissions that have been brought out in the cross examination of PW-3 and PW-4, which seriously dent the credibility of their testimony.

26. If the PWs had failed to mention in their statements u/s 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance. [See : (i) Rohtash Vs. State of Haryana, (2012) 6 SCC 589 (ii) Sunil Kumar Shambhu Dayal Gupta Vs. State of Maharashtra, 2011 (72) ACC 699 (SC). (iii) Rudrappa Ramappa Jainpur Vs. State of Karnataka, (2004) 7 SCC 422 (iv) Vimal Suresh Kamble Vs. Chaluverapinake, (2003) 3 SCC 175]

27. Of course, PW-3 claims to be an illiterate witness and therefore, her testimony must be interpreted in that light. We are cognizant that the appreciation of evidence led by such a witness has to be treated differently from other kinds of witnesses. It cannot be subjected to a hyper-technical inquiry and much emphasis ought not to be given to imprecise details that may have been brought out in the evidence. This Court has held that the evidence of a rustic/illiterate witness must not be disregarded if there were to be certain minor contradictions or inconsistencies in the deposition.³

³ State of U.P. Vs. Chhoteylal, AIR 2011 SC 697 ;

Dimple Gupta (minor) Vs. Rajiv Gupta, AIR 2008 SC 239

28. However, the testimony of PW-3 suffers not merely from technical imperfections, there are glaring omissions and improvements that have been brought out in the cross-examination, which cannot be attributed to the illiteracy of the individual deposition. If there were minor contradictions and inconsistencies, that could have been ignored since the recollection of exact details as to location and time can be attributed to the lack of literacy. However, such is not the case here. PW-3 had only heard from her husband that the appellant and Rani Kaur were seen together in the appellant's house on 18.05.99. To that extent, it is merely hearsay. Moreover, PW-4 has omitted to state this fact to PW3 in his statement before the police. He has also omitted to state that he advised his wife (PW-3) against going to the appellant's house in the night since there may arise a quarrel between all of them. If these facts are ignored from consideration, we only wonder as to why PW-3 would visit the house of the appellant in the wee hours of the morning on 19.05.99. It seems quite unnatural for PW-3 to visit the house of the appellant at 430 am in the morning without any reason. If PW-3 was aware that the appellant and Rani Kaur were in an illicit relationship for a sufficiently long duration, there was no reason to suspect all of a sudden that the two of them would get together, administer poison and murder the deceased on 19.05.1999, which fact, prompted her to visit the house of the appellant at such odd hours in the morning. Both the Courts have failed to take notice of the several significant omissions and improvements in the evidence of PW 3 and PW 4.

29. Further, PW-5 is a chance witness. He was in his village, answering the call of nature at 6 am, at which point he claimed to have seen the accused persons going in a jeep. It was elicited in his cross examination that he had a side-on view since he stated the jeep came from behind and he got a sideon glimpse. The side-on view would have been only for a couple of seconds at best, since they were travelling in a jeep. Therefore, it is not safe to rely on this testimony solely to prove that the appellant was escaping along with Rani Kaur after having murdered his wife.

30. The appellant had set up a defence that the deceased had committed suicide. The Trial Court has disbelieved it on the premise that the appellant and Rani Kaur were present in the house, and if the deceased were to have committed suicide, it was but natural for the appellant to take her to the hospital and inform concerned persons/authorities. However, we have come to the finding above that the circumstance of appellant and Rani Kaur being present in the house has not been convincingly proved beyond doubt. Therefore, the reasoning given by the Trial Court loses its legs to stand on. In any case, we believe that the appellant has raised a doubt in our minds as regards his defence that the deceased had committed suicide. There appears to be no dispute as to the fact that the death was caused by poisoning. The doctor's testimony on the basis of the chemical examiner's report that the cause of death was linked to aluminium phosphide poisoning remains unchallenged. In fact, in his 313 statement, even the appellant states that the deceased consumed poison (aluminum phosphide) and committed suicide. In *Jaipal's case*, this Court has considered the characteristic features of death caused by poisoning through aluminum phosphide. Review of scholarly literature and research papers suggests that the nature of this substance (aluminum phosphide) is such that it is not conducive for deceitful administration since it carries a pungent garlic-like odour, which cannot go unmissed. It was suspected that the substance was mixed in tea and served to the deceased since 200ml brownish liquid was found in her stomach as per the PMR. We find it doubtful that the deceased would have been made to consume tea deceitfully given the nature of the substance. Forceful administration of this substance also seems doubtful since there are no injury marks suggestive of a scuffle. In light of the evidence on record, even assuming for a moment that the appellant and Rani Kaur were present, it still cannot

be said with certainty that it was a case of homicide and not suicide. The main principle to be satisfied in a case of conviction based on circumstantial evidence is that the proved circumstances must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence- in other words, the circumstances should exclude every possible hypothesis except the one to be proved. In this case, it cannot be said that the proved circumstances, even if presence was proved, taken with other circumstances would lead to an unfailing conclusion that the appellant and Rani Kaur were guilty of murdering his wife. There was alive a strong hypothesis that the deceased had committed suicide, which explanation was led by the appellant in his statement under Section 313 CrPC, and it is sufficient to create a doubt in our minds.

31. This Court has held that the standard of proof to be met by an accused in support of the defence taken by him under Section 313 of Code of Criminal Procedure is not beyond all reasonable doubt, as such, a burden lies on the prosecution to prove the charge. The accused has merely to create a doubt and it is for the prosecution then to establish beyond reasonable doubt that no benefit can flow from the same to the accused. [See: *Pramila vs State of Uttar Pradesh 2021 SCC OnLine SC 711*]

32. Learned Counsel for the respondent-State has argued that no specific plea of alibi was taken in the statement of the appellant recorded under Section 313 CrPC. In fact, it is submitted that there is an implicit admission as to his presence in the house. It is too well settled that the statement of an accused under Section 313 CrPC is no 'evidence' because, *firstly*, it is not on oath and, *secondly*, the other party i.e. the prosecution does not get an opportunity to cross examine the accused. [*Sidhartha Vashisht Vs. State of NCT of Delhi, AIR 2010 SC 2352*]

33. It is trite law that the statement recorded u/s. 313 CrPC cannot form the sole basis of conviction. Therefore, the presence of the appellant cannot be found solely based on his statement, notwithstanding the lack of independent evidence led by the prosecution. Further, this Court has previously considered the consequences when a particular defence plea was not taken by accused u/s 313 CrPC and held that mere omission to take a specific plea by accused when examined u/s 313 CrPC, is not enough to denude him of his right if the same can be made out otherwise. See: *Periasami Vs. State of Tamil Nadu, (1996) 6 SCC 457*

34. The case of the prosecution has, from the very start, been that the appellant was seen jointly along with Rani Kaur in the appellant's house on 18.05.99 and they were seen leaving the house together on 19.05.99. They were both tried together on charges of having administered poison and killing the deceased on the intervening night of 18.05.99 & 19.05.99. Though the Trial Court has convicted both of them under Section 302, the High Court has extended the benefit of doubt to Rani Kaur and acquitted her of all criminal charges. According to the High Court, '*apart from the evidence of Melo Kaur PW3 and Gurmel Singh PW4, there is no other evidence to show that she was present in the house on the fateful night*'. However, even though it was the very same evidence that was sought to be used to prove the presence of the appellant in the house, the benefit of doubt has not been similarly extended to him. The High Court reasoned that the appellant, being the husband, it was only natural for him to be present in the house.

35. It is important to notice that the respondent-State has not challenged the acquittal of Rani Kaur before this Court. It has accepted the verdict and therefore, the acquittal has reached finality. The State cannot on the one hand accept the verdict of the Court that the presence of Rani Kaur along with the appellant is doubtful and at the same time, maintain

its case that the two of them were jointly present, committed the offence together and escaped together.

36. According to us, if the evidence of PW 3 and PW 4 was not sufficient to prove presence of Rani Kaur at the appellant's house, as a natural corollary, such evidence cannot be relied on to conclude that the appellant was present in the house. The manner in which the High Court has sought to distinguish the case of the appellant from Rani Kaur is perverse and does not seem to impress us. The case of the prosecution has consistently been that the accused persons were seen present together in the house on the night of 18.05.99 and seen leaving together in the wee hours of the next morning. In fact, PW 5 has deposed that he had seen them together in the jeep travelling towards Hiro Kurd. If the presence of Rani Kaur in the house on the date of the alleged incident is doubtful, then, the testimony of PW 5 that he had seen her along with the appellant in the jeep, will also lose its strength.

37. Seen in this background, we need not go further and consider the evidence qua other circumstances sought to be proved by the prosecution since the failure to prove a single circumstance cogently can cause a snap in the chain of circumstances. There cannot be a gap in the chain of circumstances. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt. [See: *Bhimsingh Vs. State of Uttarakhand*, (2015) 4 SCC 281.]

38. Therefore, we allow this appeal and set aside the concurrent findings of conviction.

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