

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

JAIL APPEAL No. - 774 of 2016



Pawan Kumar

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant (s) : Pawan Kumar Pandey, Purnima Singh,
Shailendra Singh Rajawat, Smriti

Counsel for Respondent(s) : G.A.

Court No. -10

Reserved on 09.04.2026

Delivered on 08.07.2026

A.F.R.

**HON'BLE RAJNISH KUMAR, J.
HON'BLE MRS. BABITA RANI, J.**

(Per : Rajnish Kumar, J.)

(1) This jail appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as "**Cr.P.C.**") has been filed by convict/appellant, Pawan Kumar, assailing the judgment and order dated 27.05.2016 passed by Additional Sessions Judge, Court No.9, Hardoi, in Sessions Trial No. 344 of 2014; *State Versus Pawan Kumar*, emanating from Case Crime No. 572 of 2014, under Sections 302, 201 of the Indian Penal Code, 1860 (here-in-after referred to as "**I.P.C.**"), Police Station Pihani, District Hardoi, whereby the appellant has been convicted and sentenced as under :-

- I. Under Section 302 I.P.C.; to undergo life imprisonment and fine of Rs.50,000/-. In default of payment of fine, to undergo additional one year's simple imprisonment.

- II. Under Section 201 I.P.C.; to undergo three years' R.I. and fine of Rs.5,000/-. In default of payment of fine, to undergo additional three months' simple imprisonment.

All the sentences have been directed to run concurrently and half of the fine on deposit, would be paid to the complainant as compensation.

FACTS

- (2) The complainant, Rajendra son of late Lochan, resident of village Shivari, police station Hariyanwan, district Hardoi, submitted a written complaint (Ext. Ka.1) on 22.05.2014 to Station House Officer, police station Pihani, district Hardoi, alleging therein that the marriage of his daughter, Kusuma aged 21 years, was done about three years ago with Pawan son of Ramdas Raidas, resident of village Itara, police station Pihani, district Hardoi. His son-in-law Pawan had given information of absconding of his daughter Kusuma that she had gone somewhere in the night of 04.05.2014 at about 09:00. When he came to village Itara, his daughter was not at home. They kept searching for her. On account of illicit relations of Kusuma with Rajeev son of Ram Ratan Raidas, resident of village Itara and on account of complete suspicion, his son-in-law Pawan lodged a case, N.C.R. No. 159/2014 under Section 498 I.P.C. on 17.05.2014, at police station Pihani against Rajeev son of Ram Ratan. On 22.05.2014, he came to know that his daughter Kusuma had been murdered by his son-in-law Pawan and her body has been buried in a pond situated between village Itara and Mathhia. He strongly

believes that on account of suspicion of her having illicit relationship with Rajeev, his son-in-law, murdering his daughter, concealed her dead body. The body buried in the pond is of his daughter Kusuma. The body may be exhumed and necessary action may be taken.

- (3) On the basis of the aforesaid written report (Ext. Ka.1) , check F.I.R., bearing Case Crime No. 572 of 2014, under Sections 302 and 201 I.P.C. was registered at police station Pihani, district Hardoi on 22.05.2014 at 18:20 hours against accused Pawan.
- (4) The investigation of the case was conducted by Sub-Inspector Nagendra Kumar Mishra (P.W.6). He, on getting copy of check F.I.R. and copy of G.D. report, recorded statement of scribe of check F.I.R., Head Moharrir Mohd. Farid Khan, and the complainant Rajendra in the case diary. Thereafter, he proceeded from the police station to the place of occurrence village Itara. He informed the Sub-Divisional Magistrate, Shahabad for conducting the proceedings of *panchayatnama* (inquest) and secured the place of occurrence. The proceedings of *panchayatnama* could not be conducted on 22.05.2014 on account of night. On 23.05.2014, on the direction of Sub-Divisional Magistrate, Shahabad, Judicial Magistrate, Tehsildar Ramavtar Verma, came at the place of occurrence and after completion of inquest proceedings, the dead body was sent for post-mortem. Thereafter, he, on the pointing out of the complainant, inspected the place from where the dead body of

the deceased was recovered and prepared the site-plan. He also prepared the seizure memo (fard) of the clothes and other articles of the deceased recovered from the place of occurrence. On 26.05.2014, he arrested the accused Pawan and recorded his disclosure statement, wherein he stated that he had murdered his wife Kusuma by strangling her with a rope and he disclosed that the spade used for digging was kept at his house which he can get recovered. Thereafter, he led the police and got the spade recovered. The Investigating Officer prepared the seizure memo (Ex. Ka-13) (fard) of spade and also site plan of the place of recovery of spade (Ex. Ka-14).

- (5) The post-mortem of the dead body of the deceased Kusuma was conducted by Dr. Vikas Chandra on 24.05.2014 between 02:20 to 03:00 P.M. at District Hospital, Hardoi, which was brought by C.P. Harishchandra Yadav and C.P. Arvind Singh Yadav. In the report, he noted that dead body was of woman; her age was 21 years; her height was about 164.5 c.m. He further noted in the report that a decomposed skeletonized body seen during post-mortem examination and a piece of plastic rope with knot found beside body. He noted under the heading AMI (Ante Mortem Injuries) that body is decomposed and skeletonized, hence AMI could not be ascertained. Under the heading post-mortem findings, he noted as under :-

“Postmortem findings -

Skull is separated from trunk at atlanto axial axis (cervical spine). No scalp hair on scalp but bunch of hairs present and kept near skull.

Decomposed skin & muscle over chest and upper abdomen.

Left upper limb - Humerus with Radius ulna +
Right upper limb- do”

- (6) Dr. Vikas Chandra further noted in the report that brain was not found but only skeleton was found; no organ inside the body was found but only skeleton was found; maggot and worm were found; and in the skeleton, two femur bones of both legs, tibia bones of both legs, humerus bones of both hands, radius bones of both hands, ulna of both hands and skull bone, were found. As per his opinion, cause of death could not be ascertained. Part of bone and muscle were preserved for DNA testing and chemical analysis. Viscera was decomposed. He also noted that the probable time of death is about three weeks.
- (7) Upon receiving the post-mortem report and on completion of the investigation, the Investigating Officer Nagesh Kumar Mishra (P.W.6) had filed charge-sheet No. 105/14 against the accused Pawan under Sections 302 and 201 I.P.C. on 27.06.2014 before the Court. The Chief Judicial Magistrate, Hardoi, took cognizance of the charge-sheet and committed the same to the Court of Sessions by means of order dated 04.07.2014, where the case was registered as Sessions Trial No. 344 of 2014. Learned Additional Sessions Judge, Court No.2, Hardoi, framed charges

against the accused Pawan under Sections 302 and 201 I.P.C. The accused Pawan denied the charges and pleaded for trial.

- (8) The prosecution, in order to prove its case, examined six witnesses, who are as under :-

P.W.1-Rajendra	Complainant/father of the deceased
P.W.2-Ram Ratan	Father of Rajeev (P.W.3)
P.W.3-Rajeev	Hostile Witness
P.W.4-Dr.Vikas Chandra	Conducted the post-mortem of the dead body of the deceased and prepared the post-mortem report.
P.W.5-Ram Autar Verma	Tehsildar, Tehsil Sahabad, district Hardoi, who prepared the inquest report
P.W.6-S.I. Nagesh Kumar Mishra	Investigating Officer

- (9) In order to prove its case, the prosecution has also placed on record and proved the following documentary evidence :-

Ext. Ka. 1	Written Report
Ext. Ka. 2	Post-mortem report
Ext. Ka.3	Inquest Report
Ext. Ka.4	Letter to Reserved Inspector
Ext. Ka.5	Letter to Chief Medical Officer
Ext. Ka. 6	Challan Lash
Ext. Ka. 7	Photo Lash
Ext. Ka. 8	Sample seal
Ext. Ka. 9	Check F.I.R.
Ext. Ka.10	Copy of G.D.
Ext. Ka. 11	Site-plan of the place of occurrence
Ext. Ka. 12	Seizure memo of torn petticoat of the deceased
Ext. Ka.13	Seizure memo of spade
Ext. Ka. 14	Site-plan of the place, where the dead body was concealed.
Ext. Ka. 15	Charge-sheet

- (10) The prosecution also produced and proved the following material Exhibit.:-

Material Ext. 1	Spade (got recovered on the pointing out of the accused vide recovery memo proved as Ext. Ka.13)
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(11) After completion of the evidence of prosecution, the statement of the accused Pawan was recorded under Section 313 Cr.P.C., in which he stated that the evidence of prosecution witnesses is false and he has been implicated in the case on account of enmity and the case has falsely been lodged against him. He further stated that he lodged a report against Rajeev for abducting his wife, which was not investigated. The defence had not led any evidence either oral or documentary.

(12) The learned trial Court, after hearing learned Counsel for the parties and upon examining the evidence and material on record, concluded that the prosecution has proved its case beyond reasonable doubt against the accused Pawan and recorded conviction and sentenced the accused Pawan in the manner as stated in paragraph-1 here-in-above in this judgment.

(13) Feeling aggrieved, the accused Pawan has preferred the instant appeal.

ARGUMENTS

(14) Heard, Shri Shailendra Singh Rajawat, learned Counsel for the appellant and Shri Pawan Kumar Mishra, learned A.G.A. for the State.

(15) Learned counsel for the appellant submitted that the impugned judgment and order of conviction and sentence is not sustainable

as the entire prosecution case rests solely on circumstantial evidence and the prosecution has utterly failed to establish complete chain of circumstances leading only to the irresistible conclusion of guilt of the accused/appellant. He further submitted that the appellant had lodged an N.C.R. in regard to missing of his wife/deceased but the same was not investigated. He further submitted that only skeleton was recovered and the dead body of the deceased could not be identified. The samples were taken for D.N.A. test but the same could not be done because the complainant refused to give the sample and the skeleton was not identifiable. He further submitted that the informant was an interested witness as he was father of the deceased and Nandlal, who could have been an independent witness, has not been produced in evidence. Even otherwise the submission is that there are material contradictions in the evidence adduced by the prosecution and the medical evidence does not corroborate the prosecution case. He further submitted that a false recovery of spade was made, however, mud on the spade was also not got matched with the place of occurrence, therefore, the same also could not be relied. He also submitted that the evidence and material on record indicate that the prosecution has failed to prove its case beyond all reasonable doubts against the appellant and if two views are reasonably possible on the evidence and material on record, the view, which is in favour of the accused, could only have been taken and the appellant should have been acquitted giving him benefit of doubt.

- (16) On the basis of above, learned counsel for the appellant submitted that the learned Trial Court has passed the impugned judgment and order without considering the evidence and material on record and dealing it appropriately, therefore, it is not sustainable in the eyes of law and liable to be set aside.
- (17) Learned counsel for the appellant relied upon **Kali Ram Vs. State of Himachal Pradesh**; 1973 (2) SCC 808, **Sharad Biridhichand Sarda Vs. State of Maharashtra**; (1984) 4 SCC 116, **Govindaraju alias Govinda Vs. State By Srirampuram Police Station and another**; (2012) 4 SCC 722, **Krishnegowda & others Vs. State of Karnataka by Arkalgud Police** (Criminal Appeal No. 635 of 2006, decided on 28.03.2017), **State of Uttarakhand Vs. Darshan Singh**; (2020) 12 SCC 605, **Chhote Lal Vs. Rohtash and others**; 2023 SCC OnLine SC 1675, **State of Madhya Pradesh Versus Ramjan Khan and others**; 2024 SCC OnLine SC 3070, **Balaram Vs. State of Madhya Pradesh**; (2024) 20 SCC 490, **Sangappa Vs. The State of Karnataka** (Criminal Appeal No. 1715 of 2017, decided on 27.02.2025), **Kattavellai @ Devakar Vs. State of Tamil Nadu**; (2025) 7 S.C.R. 984 : 2025 INSC 845, **Abdul Wahid and another Vs. State of Rajasthan**; 2025 SCC OnLine SC 453 and **Aslam alias Imran Vs. State of Madhya Pradesh**; 2025 SCC OnLine SC 670.
- (18) Learned A.G.A. vehemently opposed the submissions of learned counsel for the appellant. He submitted that the instant case is of

circumstantial evidence and the chain of circumstances is complete and refer towards the guilt of the appellant only. The appellant had a motive to kill on the ground that he had suspicion that the deceased had illicit relations with P.W.3/Rajeev of his village. The appellant has also made an extra-judicial confession and in pursuance thereof, the spade, which was used in digging ditch for concealing the body, was recovered on his pointing out. The dead body was recovered from the ditch near the pond, which was near the village of the deceased and the evidence and material on record proved that the dead body was of the deceased wife of the appellant. He further submitted that the conduct of the appellant also shows that it is he, who could only be the author of crime because, firstly, he informed his father-in-law after two days of alleged missing at about 09:00 in the night on 04.05.2014 that his daughter is absconding somewhere and after thirteen days of the alleged missing, he got an N.C.R. lodged under Section 498 I.P.C. against P.W.3/Rajeev disclosing therein that his wife is absconding with him. Thus, if the appellant knew it, then he should have lodged the F.I.R. on the date of missing itself but when he found that father of the deceased is enquiring about the deceased in the village and she may be recovered, he lodged the N.C.R. to save himself and thereafter absconded because when the father of the deceased lodged the F.I.R. on 22.05.2014, the appellant was not traceable and he could be arrested only on 26.05.2014. Thus, the conduct of the appellant also shows that he is the only guilty.

- (19) On the basis of above, learned A.G.A. submitted that the learned Trial Court has rightly and in accordance with law considered the evidence and material on record and passed the impugned judgment and order of conviction and sentence by a reasoned and speaking order. There is no illegality or error in the impugned judgment and order, which may call for any interference by this Court.

ANALYSIS

- (20) We have considered the submissions of learned counsel for the parties and perused the records.
- (21) The facts, as disclosed above and in view of the consensus among learned counsel for the parties, indisputably the present case hinges on circumstantial evidence. Thus, before proceeding further to consider and record the findings, it would be apt to refer the law on the issue.
- (22) The law is well settled that in cases based purely on circumstantial evidence, the onus lies on the prosecution to prove the chain of circumstances, on account of which, irresistible conclusion can be drawn that the appellant is only the author of crime. The Hon'ble Supreme Court, in the case of **Sharad Biridhichand Sarda Vs. State of Maharashtra (Supra)**, considering the case of **Hanumant Vs. State of Madhya Pradesh**; AIR 1952 SC 343, has laid down the five golden principles, which constitute the panchsheel of the proof of a case

based on circumstantial evidence. The relevant paragraphs 151, 152, 153 and 154 are extracted here-in-below:-

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

152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

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

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

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

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

(23) The Hon’ble Supreme Court, in the case of **Sangappa Vs. the State of Karnataka (Supra)**, has held that higher threshold of proof required in cases of circumstantial evidence, which has been consistently upheld by this Court in a catena of decisions and a criminal trial resting on circumstantial evidence, any reasonable doubt as to the completeness or consistency of the chain must result in an acquittal. Thus, in cases of circumstantial

evidence, the prosecution must prove each link in the chain beyond a reasonable doubt.

- (24) The Hon'ble Supreme Court, in the case of **Abdul Wahid and another Vs. State of Rajasthan (Supra)**, has held that it is for the prosecution to connect the accused to the murder of the deceased by producing credible and legally admissible evidence.
- (25) In view of above, the case based on circumstantial evidence is to be considered on the touchstone of panchsheel (5 golden principles) as enumerated in the case of **Sharad Biridhichand Sarda Vs. State of Maharashtra (Supra)**, which is being consistently followed by the Hon'ble Supreme Court as well as this Court.
- (26) Adverting to the facts of the present case, the F.I.R. was lodged by father of the deceased, who is father-in-law and maternal uncle of the appellant alleging therein that his son-in-law i.e. the appellant had informed him about absconding of his daughter Kusuma at 09:00 in the night on 04.05.2014, upon which, when he came to village Itara, his daughter was not at home. Thereafter, they kept on searching for her and the appellant lodged an N.C.R. on 17.05.2014 of her eloping by Rajeev of his village on account of her illicit relations with him and complete suspicion about the same. On coming to know on 22.05.2014 that his daughter has been murdered by the appellant, he lodged the F.I.R. with the allegations that the appellant after killing his daughter has concealed her dead body in a pond in between

village Itara and Mathhiya. It has also been alleged that it would have been done on account of suspicion of illicit relationship of his daughter with Rajeev. Thus, it is a case of circumstantial evidence, in which the evidence adduced before the Court are to be analyzed to see as to whether the chain of circumstances are complete, on the basis of which the accused/appellant could have been held guilty or not, therefore, it would be apposite and beneficial also to give the brief description of evidence of witnesses adduced before the trial Court.

- (27) The complainant appeared as P.W.-1. He deposed that the marriage of his daughter Kusuma was solemnized with the appellant about four years back. Initially their relations were cordial but subsequently they used to scuffle, which was informed by his daughter. She, being harassed by the appellant, had come to his house and was not ready to go back. However, after compromise and assurance given by the appellant that he would not quarrel, he had sent her with him. On 06.05.2014, the appellant came to his house and informed that his daughter had absconded somewhere. He came to village Itara alongwith his brother and appellant and enquired about her and searched her, then the appellant told that his daughter had illicit relations with Rajeev son of Ram Ratan and she would have fled with him, upon which, he went to the house of Rajeev, who told that he has not eloped his daughter. Then he enquired in the village. There is a pond of Mathhiya. The ladies, who had gone there for

defecation, informed that dogs are digging the floor. He told the appellant about the information given by Rajeev and when they oppressed him, then he confessed that he has killed his daughter and buried her dead body in the pond. He also showed the place, where he had buried the dead body of his daughter. Thereafter, he fled away from there. Foul smell was coming from there and a petticoat of his daughter was lying there, which was identified by him. Thereafter, he wrote an application and went to the police station and got the F.I.R. registered. Paper No.10-A was read over to him, upon which, he stated that this is the same application, which was given by him at the police station and his thumb impression is on it. It was marked as Ext. Ka.1. Thereafter, the police personnel had got the dead body exhumed and he and his maternal uncle Nanda @ Nandlal had excavated. The dead body was found, the head bone of which was separated and skin was not on it and he, seeing the thumb, had identified that it is the dead body of his daughter. Thereafter, the inquest was done and the dead body was sent to the mortuary. In the cross-examination, nothing could be extracted, which may create any doubt about his testimony.

- (28)** Ram Ratan appeared as P.W.2. He is the father of Rajeev. He deposed that the appellant had come to his house on 17.05.2014 and informed that his wife had illicit relations with Rajeev, therefore, on 04.05.2014, he has killed her by pressing her neck by a rope and lodged the report of her absconding to save him. He

also threatened that if he would tell it to anyone, then he will have to face dire consequences. He told it to the Inspector in his statement. In the cross-examination also, he admitted that the appellant had come to his home but instead of telling about the illicit relations with Rajeev, he had talked generally in regard to agriculture and, thereafter, went away. Thus, though on the very same day in the cross-examination, he has changed his stand about the information of illicit relations with Rajeev but in response to a suggestion, he stated that it is wrong to say that on 17.05.2014, Pawan had not given any information in regard to killing his wife Kusuma on 04.05.2014 by pressing her neck from rope and concealing her body near the pond of Mathhiya under the ground. He also, in regard to another suggestion, stated that it is wrong to say that the accused/appellant had not given any information that he had no other way out except to kill his wife on account of illicit relations of Rajeev with his wife. He also, in response to a suggestion, stated that it is wrong to say that the accused had not given the threat of dire consequences. Lastly, in regard to a suggestion, he deposed that the accused would not have murdered Kusuma and buried her aside the pond and Rajeev would have eloped her. Thus, it is apparent from his reply to the aforesaid suggestions that he has supported his evidence given in the examination-in-chief. Thus, the evidence of P.W.2 is in support and consistent with the evidence of P.W.1 and his contrary statement is not believable because in the circumstances, it is highly improbable that the appellant would

have gone to the house of P.W.-2 only to talk generally on agriculture.

- (29) Rajeev appeared as P.W.3, who has been declared hostile. He denied his statement recorded under Section 161 Cr.P.C., in which he had stated that on 04.05.2014, while he had gone out for defecation, he had seen that the appellant was going with the dead body of his wife in the bag and he had seen it in the light of torch and asked from him. In the cross-examination, he admitted that the N.C.R. was lodged by the appellant on 17.05.2014 against him and he was bailed out at the police station and he had also given statement to the Inspector. The Investigating Officer, who appeared as P.W.6, has deposed in regard to the statement of Rajeev recorded under Section 161 Cr.P.C. that he himself had recorded the statement of Rajeev and whatever was told by Rajeev, was recorded by him and he has not written anything on his own. He also deposed that Rajeev had told that the deceased Kusuma and Pawan used to quarrel and the appellant had suspicion that Kusuma had illicit relations with him, on account of which, the husband and wife used to quarrel. Rajeev had also told that on 04.05.2014 at about 03:00 in the night, he was going towards the field for defecation, when he saw that the appellant, keeping something in a bag, was going out of village by a cycle. He had recorded the statement of Rajeev in paper No.4 of C.D. on 25.05.2014 and if Rajeev has denied his statement, then he is speaking lie. In cross-examination, he has denied the suggestion

that he has wrongly recorded the statement of Rajeev in the case diary. No further cross-examination, on this issue, has been made from him, therefore, upon consideration of the evidence of the Investigating Officer, P.W.6 and the evidence of P.W.1 and evidence of P.W.2, it is apparent that the evidence of P.W.3 is not believable and his statement to police finds support from the evidence of P.W.6.

- (30)** The post-mortem of the deceased was conducted on 24.05.2014 in the District Hospital, Hardoi. The post-mortem report has been proved by Dr. Vikas Chandra. He deposed that the deceased was a lady and her age was about 21 years. Her height was 164.5 cm. The dead body was a decomposed skeleton. Head of which was separated from the neck and there was a plastic rope inside it, in which, there was a knot. The deceased had died about three weeks ago. The cause of death could not be ascertained. Petticoat was there on the body of the deceased. In the cross-examination also, he deposed that the death could have been caused about three weeks ago and the age of the dead body, as per his assessment, would have been 25 years. A plastic rope, having a knot, was found alongwith the dead body and a cloth was also found. The length of the rope was about 1.5 feet. The piece of cloth was apparently of petticoat, colour of which was not clear. It was on the body of the deceased and it was completely rotten. He has denied the suggestion that the dead body was not of a lady but of a man. He also denied the suggestion that there was

nothing on the dead body and it was only a skeleton. Whatever the minor contradictions were there in the cross-examination, were got clarified by the defence.

(31) Ramavtar Verma appeared as P.W.5. He was posted as Naib Tehsildar in Tehsil Shahabad, Hardoi on 23.05.2014. He had conducted the inquest and prepared the inquest report. He deposed that after taking possession of the dead body of Kusuma daughter of Rajendra, he started proceeding of inquest. He, after appointing the witnesses of inquest, conducted the inquest and after taking their opinion, with which he was in agreement, he completed the inquest and thereafter sealing the dead body, handed over it to the Constable Harishchandra Yadav and Constable Arvind Yadav and sent it to the Head Office for post-mortem. No cross-examination has been made from him.

(32) The inquest report i.e. Ext. Ka.3, indicates that rotten flesh was on the body at several places and the hairs were separated from her head. There was a faded plastic rope, having a knot near the body. It also shows that there was a rotten flesh on the right hand. It is also mentioned that the remaining part of cloth of petticoat matched with the cloth of petticoat found in excavation. The opinion of the witnesses, recorded in the inquest report, is that on account of illicit relations with the deceased, she has been murdered by the husband and her dead body was buried in the pond. Even then, to know exact cause of death, the post-mortem may be got done. As per opinion of the Magistrate recorded in the

inquest report, he was in agreement with the opinion of the witnesses of the inquest. It is also recorded that the husband of the deceased and his family members are absconding and, on account of burial of the dead body of the deceased aside the pond, there is strong suspicion of her murder. The inquest report has been proved by P.W.5 and since there is no cross-examination from P.W.5, it remains uncorroborated.

- (33)** Sri Nagesh Kumar Mishra, the Investigating Officer, appeared as P.W.6. He deposed that he was posted as In-charge Inspector, police station Pihani, district Hardoi, when the complainant had lodged the FIR on the basis of written complaint, which was registered as Case Crime No.572 of 2014, under Section 302 and 201 I.P.C. by Head-Muharrir Farid Khan. The check F.I.R. is Paper No. 3-A, Ext. Ka.9, a corresponding entry of which was made in the General Diary at serial No. 46 at 18:20 hours, which has been marked as Ext. Ka.10. He further deposed that after recording the statement of the Head Constable and the complainant, he reached on the spot and informed to the Sub-Divisional Magistrate for inquest and secured the place of incident. However, on account of night, the proceedings of inquest were conducted by Shri Ram Autar Verma, Naib Tehsildar on the next morning and the body was sent for post-mortem. He, on the pointing out of the complainant, inspected the place from where the dead body was recovered and prepared a site plan which has been marked as Ext. Ka.11. He, on the same

date, recovered torn piece of petticoat from near the place of recovery of dead body, which has been shown in the site plan with the mark zero, the recovery memo of which was prepared by the Naib Tehsilder Shri Ram Autar Verma, who was present alongwith him, which has been marked as Ext. Ka.12. On the same day, he recorded the statement of witnesses Rajendra, Nanda alias Nand Lal, Shambhu and Mahadeva Prasad Rathore. On the next day i.e. 24.05.2014, he recorded the statements of Sanjay son of Babu Ram and Ram Ratan son of Late Bhola. On 25.05.2014, he recorded the statements of the Naib Tehsildar and witnesses of inquest, namely, Rajendra, Nanda alias Nandlal, Shambhu, Noormohammad and Putan and also recorded the statement of Rajeev and made efforts to arrest the accused. On the next day i.e. 26.05.2014, the accused/appellant was arrested from near the Gopamau Chungi, Kasba Pihani and his statement was recorded.

- (34) P.W.-6 further deposed that the accused, in his statement, admitted that he has killed his wife by pressing his neck by a rope and the spade, by which he had dig the ditch and concealed the dead body, has been kept in the house and he can get it recovered. Thereafter, they went to his house and he got the spade recovered, the recovery memo of which was prepared by him and marked as Ext. Ka.13. He also prepared the site plan of place of recovery of spade, which has been marked as Ext. Ka.14. He also recorded statements of witnesses of the recovery memo of the

spade, namely, Madan Pal, Lala Ram and Anoop Kumar on 22.06.2014 and after finding the evidence against the accused/appellant, he submitted the charge sheet No.105/2014, under Sections 302 and 201 I.P.C. on 27.06.2014, which has been marked as Ext. Ka.15. The spade in the sealed cover was produced, which was opened and the Investigating Officer proved that it is the same spade, which was got recovered by the accused/appellant and it was used by him for concealing the dead body. He, in the cross-examination, also deposed that the F.I.R. was got written by the complainant on the basis of tehrir, got written from somebody after putting thumb impression and he denied the suggestion that it was got written at the Police Station. He admitted that complete investigation of the case was done by him.

- (35)** P.W.-6 further deposed that on information of eloping of the wife of the accused with Rajeev, he used to go to village Itara daily for investigation. Rajeev had told him that he had not eloped her. However, the accused, on being asked rigorously, had admitted that he has killed his wife and concealed the dead body under the ground. He further deposed that he had searched the accused appellant from 22.05.2014 to 26.05.2014 and went to his house also for his arrest but he was not traceable. He denied the suggestion that the accused had not told him about the murder of his wife and concealment of her dead body and the recovery is false. He further deposed that during investigation, he had

recorded the statements of many villagers about the illicit relations between the Rajeev and the deceased, in which Ram Ratan, Sanjay and Rajeev himself had denied about the illicit relations of Rajeev and the deceased. He further deposed that the appellant had lodged an N.C.R. No.159/2014 on 17.05.2014 and alleged that Rajeev has eloped his wife. He further deposed that during investigation of the case under Section 302 I.P.C., he had also made investigation about the aforesaid facts and they were found false.

- (36)** P.W.-6, on re-examination, has confirmed that he had recorded the statement of Rajeev on 25.05.2014 and he had written what was told by him and he had not written anything on his own. Rajeev had told him that the deceased Kusuma and the appellant, Pawan used to quarrel and the Pawan had suspicion that Kusuma had illicit relations with him, on account of which, husband and wife used to quarrel. Rajeev had told him that on 04.05.2014 at about 03:00 in the night, while he was going for defecation towards his field, he had seen that the accused; Pawan, keeping something in a bag, was going out of the village on a cycle. The statement of Rajeev is recorded in Parcha No.4 of Case Diary on 25.05.2014. If the Rajeev has denied about the aforesaid statement, then he is speaking lie. He also denied the suggestion that he has written wrong statement of Rajeev in the Case Diary. He further deposed that on the basis of statement of the complainant about identification of the deceased and recovery of

spade on the pointing out of the accused and his admission and other circumstantial evidence, the deceased was identified. The place of the recovery of body from the house of the accused is 400 meters and 150 meters from the village Mathhiya. He further deposed that the body was recovered from the ditch, which was got excavated and there is no abadi within a radius of 200 meters from the place of recovery of dead body. He also denied the suggestion that the recovered skeleton was not of the deceased and was brought from a mortuary, therefore, D.N.A. was not got done. He also denied the suggestion that the accused had not murdered his wife and he has been falsely implicated in the case.

(37) On the basis of aforesaid evidence and the arguments advanced before this Court, now this Court has to consider as to whether the circumstances are complete in the manner that an irresistible conclusion of guilt of the accused can be recorded and the learned Trial Court has rightly and in accordance with law recorded the conviction of the appellant or not. The learned Trial Court, before recording the findings as to how the chain of circumstances are complete, has mentioned the chain of circumstances required to be proved and we are in agreement with the same, which are extracted here-in-below:-

“1. अभियुक्त का अपनी पत्नी मृतका कुसमा पर गांव के राजीव नामक व्यक्ति से नाजायज संबंध होने का झूठा शक करना और उसके कारण मृतका को मारना-पीटना व प्रताड़ित करना।

2. अभियुक्त द्वारा अपनी पत्नी मृतका को घटना से पहले उसके मायके से विदा कराकर अपने घर ले जाना।
3. अभियुक्त के घर से मृतका का दिनांक 04.05.2014 को लापता हो जाना तथा उसी दिन मृतका की मृत्यु होना।
4. अभियुक्त द्वारा दिनांक 17.05.2014 को झूठा एन०सी०आर० उसकी पत्नी को राजीव द्वारा भगा ले जाने के संबंध में राजीव के विरुद्ध थाने पर दर्ज करवाना।
5. अभियुक्त के गांव के पास के तालाब से मृतका का शव सड़ी गली अवस्था में दिनांक 23.05.2014 को बरामद होना।
6. अभियुक्त द्वारा मृतका की हत्या करने का हेतुक।
7. अभियुक्त का घटना के पश्चात अपने घर से फरार हो जाना।
8. अभियुक्त द्वारा स्वयं की निशादेही पर मृतका के शव को गड्ढा खोदकर गाड़ने में प्रयुक्त फावड़े का बरामद करवाना।
9. अभियुक्त द्वारा पी०डब्ल्यू०-01 व पी०डब्ल्यू०-02 के समक्ष मृतका की हत्या कर शव को गांव के तालाब में गाड़ने संबंधी दोष स्वीकारोक्ति कथन करना।”

(38) While considering the first chain of circumstances in regard to the suspicion of illicit relations between the deceased and the Rajeev, on account of which, the accused used to beat and harass the deceased, the P.W.-1 has stated in his evidence that initially the relations between his daughter and the accused were cordial but subsequently they used to scuffle, on account of which, his daughter had come to his house and was not ready to go back. However, after compromise and assurance of the accused/appellant that he would not quarrel, he had sent his daughter with the accused. He has also deposed that on 06.05.2014 the accused/appellant had come to his house and informed that his daughter has fled away somewhere, upon which, he alongwith his brother and the appellant had come to his village and started searching for her. Thereafter, the appellant informed to the complainant that the deceased had developed

illicit relations with Rajeev and would have fled away with him, but upon query from Rajeev, he denied the same. In the cross-examination, he admitted that the accused/appellant has lodged the N.C.R. against the Rajeev, in which he has disclosed that his wife Kusuma has fled away with Rajeev on 04.05.2014 at 09:00 in the night. P.W.-2, who is father of Rajeev, has also admitted in his examination-in-chief that the accused/appellant had come to his house on 17.05.2014 and told him that his wife Kusuma had developed illicit relations with Rajeev, on account of which, he has killed her on 04.05.2014 by pressing her neck by a rope and lodged the report of eloping her by Rajeev to save him. Though in the cross-examination, he denied the information given by the appellant about the illicit relations of the deceased with Rajeev but on the very same day of examination-in-chief, a contrary statement by the witness is highly improbable and not believable. Even otherwise, he has not denied that the accused/appellant had come to his house on 17.05.2014. In cross-examination, in response to a suggestion, he has deposed that it is wrong to say that the appellant had not given any information that he had no other way out except to kill his wife on account of illicit relations of Rajeev with his wife. Thus, he has supported his evidence in examination-in-chief. The P.W.-2 has also not been got declared hostile, therefore, his evidence is consistent with the evidence of P.W.-1 and the case of prosecution.

(39) The Investigating Officer, P.W.-6 has also deposed that the accused/appellant had lodged the N.C.R. against Rajeev on 17.05.2014 and he had enquired about those facts during investigation of the present case and found the allegations false. He has also clarified in his cross-examination that he had recorded the statement of many persons of the village in regard to the illicit relations of the deceased and the Rajeev and they had denied about the same. Thus, from the evidence of P.W.-6 also, it is apparent that there is no evidence of illicit relations of the deceased with the Rajeev but the accused/appellant had suspicion of illicit relations between the both. Rajeev also appeared as P.W.-3. Though he has been declared hostile but he has admitted categorically in his evidence that there was no talk between him and the deceased. It has also come in evidence that the distance between the house of the accused/appellant; Pawan and Rajeev is about 400 meters. Thus, it has been proved by the prosecution that the accused/appellant had strong suspicion of illicit relations between the deceased and the Rajeev, on account of which, he used to quarrel with her and harass her, therefore, she had gone to her father's house and was not ready to go back with the accused/appellant.

(40) In regard to the second chain of circumstances of bringing the deceased from her father's house before the incident, the P.W.-1 has deposed that the deceased Kusuma was being beaten and harassed by the accused/appellant, on account of which, he had

come to his house and told him that she has come on account of beating and harassment by the accused/appellant. However, after compromise and assurance of the accused/appellant of not quarreling with the deceased, he had sent his daughter with him. In this regard, no cross-examination has been made from the P.W.-1. P.W.-1 has also deposed that on 06.05.2014, the accused/appellant had come to his house and informed that his daughter had fled away somewhere on 04.05.2014 at 09:00 in the night but subsequently he lodged the N.C.R. on 17.05.2014 disclosing therein that Rajeev had eloped his wife on 04.05.2014 at 09:00 in the night. Thus, it has been proved by the prosecution that the accused/appellant had brought his wife from her father's house before the date of incident on the assurance that he would neither quarrel nor harass the deceased and, thereafter, she was gone missing on 04.05.2014, in regard to which, the accused/appellant has taken contrary stand in the information given to the complainant about her missing and in the N.C.R., which was lodged after 13 days.

- (41)** In regard to the third chain of circumstances of missing of deceased from the house of the accused/appellant on 04.05.2014 and her death on the same day, it is apparent from the aforesaid findings that on account of quarrel and harassment by the accused/appellant, the deceased had gone to her father's house and told him about the same but thereafter the accused/appellant went to bring her and on compromise and his assurance that he

would not quarrel and harass the deceased, brought her with him and thereafter she was with the appellant and she had gone missing on 04.05.2014, in regard to which, he informed the complainant after two days i.e. on 06.05.2014. Thus, lastly also the deceased was with the appellant. Thereafter the complainant kept on searching for his daughter. On 17.05.2014, the accused/appellant lodged the N.C.R. with the allegations that her wife has been eloped by the Rajeev on account of illicit relations between both, on 04.05.2014 at 09:00 in the night. Thus, it is proved by the evidence on record that the deceased had gone missing on 04.05.2014 at 09:00 in the night. The P.W.-4 i.e. the doctor, who conducted the post-mortem, has deposed that the deceased had died about three weeks back. The post-mortem was conducted on 24.05.2014, therefore, three weeks back comes on 03.05.2014 and, admittedly, the deceased was missing since 04.05.2014, therefore, the post-mortem also supports the prosecution case of death of the deceased, on the date of missing i.e. on 04.05.2014. The inquest report is also in support of the prosecution case.

- (42)** An argument was advanced that the dead body could not have decomposed and came in the form of skeleton within three weeks on the basis of some findings recorded about the post-mortem changes and putrefaction in Chapter 14 of Medical Jurisprudence and Toxicology by Modi. However, it is provided in the same chapter that India being a vast country, the climatic conditions vary so much in different parts that it is impossible to give the

exact time when the putrefactive processes develop in a dead body, and no evidence in this regard has been adduced. Thus, the contention of learned counsel for the appellant in this regard is misconceived and not tenable.

(43) The Hon'ble Supreme Court, in the case of **State of Uttarakhand Vs. Darshan Singh (Supra)**, has considered about the medical evidence and it has been held that the opinion given by a medical witness is only an opinion and need not be the last word on the subject. Such an opinion shall be tested by the Court. Thus, if the prosecution case is otherwise proved, the medical evidence can not detain the Court in considering the other evidence on record and recording the findings on the basis of same.

(44) In regard to the fourth chain of circumstances regarding the N.C.R. on 17.05.2014 by the accused/appellant of eloping the deceased by Rajeev, the P.W.-1 has deposed in his cross-examination, on a query made by the defence, that he knows that his maternal nephew has lodged an N.C.R. against Rajeev on 17.05.2014 under Section 498 I.P.C., in which he has stated that his wife Kusuma has fled away with Rajeev on 04.05.2014 at 09:00 in the night. The appellant is maternal nephew as well as son-in-law of the complainant. P.W.-6, the Investigating Officer has also deposed in his evidence that the accused/appellant had lodged the N.C.R. on 17.05.2014 with the allegations that Rajeev has eloped his wife. Thus, if the version of N.C.R. lodged by the accused/appellant is taken correct, then he knew that his wife has

been eloped by Rajeev on 04.05.2014 but he had given wrong information to the complainant about her missing, that too after two days on 06.05.2014 and when he was searching for his daughter, after thirteen days, the appellant lodged the N.C.R. He had also admitted before the P.W.-2 that he has lodged the N.C.R. in his defence to save him. Thus, it is apparent that he lodged a false N.C.R. after 13 days of occurrence to save himself. The Investigating Officer, P.W.-6 has categorically stated in his evidence that during investigation of the case, he had also enquired about the facts mentioned in the N.C.R. and the same were found false and all the witnesses have told that the allegations of illicit relations of the deceased with Rajeev are false. The defence has also failed to adduce any evidence in regard to the allegations made in the N.C.R.

- (45)** In regard to the fifth chain of circumstances, the recovery of the body of the deceased on 23.05.2014 from a ditch near the pond, which was near the village of the accused, it has been proved by the P.W.-1 that the skeleton was recovered with some flesh on the parts of body of his daughter. P.W.-5, Naib Tehsildar, who conducted the inquest, has also recorded the opinion of the witnesses of the inquest that the body is of the deceased Kusuma, who has been killed by her husband i.e. the accused/appellant and the Naib Tehsildar in agreement with the opinion of the witnesses, had recorded his opinion accordingly and sealed the dead body and sent for post-mortem. It is proved from the inquest report as well as his evidence adduced before the Court that the

body of the deceased was recovered from the ditch near the pond near the village of the accused/appellant, which was at a distance of about 400 meters from his house. No cross-examination has been made from P.W.-5, who proved the inquest report. Thus, the contents of inquest report and his evidence before the Court stands uncorroborated. Thus, the evidence of P.W.-1, P.W.-5 and P.W.-6 as well as the inquest report and the site plan of the place of recovery prepared by P.W.-6 are consistent on the issue. Even otherwise no evidence has been adduced that any other lady of same height etc. of village or nearby place had died about three weeks ago and buried there. A piece of cloth of petticoat of deceased, a piece of which was found from the body of deceased, was also found near the place of recovery and the dogs were also shown digging the earth there, which also could not be controverted. These circumstances also support the recovery.

- (46)** In regard to the sixth chain of circumstances regarding motive of the accused for murdering the deceased, as has already been recorded that the accused had false suspicion of illicit relations of deceased with Rajeev, in regard to which, he had told to the complainant i.e. P.W.-1, who was not only father-in-law but also maternal uncle of the appellant. He had also told the same to the P.W.-2 and that he has lodged a false report against Rajeev to save him. Thus, on the basis of N.C.R. lodged by the accused/appellant and the evidence adduced before the Court by the prosecution, it is apparent that the accused/appellant had a

false suspicion of illicit relations of his wife with the Rajeev. P.W.-6, the Investigating Officer has also deposed in his evidence that he had enquired about facts of N.C.R. during investigation of the present case and found that the allegations against the Rajeev are false. Thus, it is apparent from the evidence on record that the accused/appellant had suspicion of illicit relations of his wife with Rajeev, even thereafter, he brought his wife from the house of his father on the assurance that he would not quarrel with her and harass her. Thus, he not only had motive to kill the deceased but brought his wife from the house of her father prior to incident, who was his maternal uncle also. The appellant has also stated in his statement under Section 313 Cr.P.C. that he has been implicated on account of enmity, therefore, on account of his suspicion, he was also keeping enmity.

(47) The Hon'ble Supreme Court, in the case of **Aslam alias Imran Vs. State of Madhya Pradesh (Supra)**, has held that it is a settled law that enmity is a double-edged weapon. On one hand, it provides motive, on the other hand it also does not rule out the possibility of false implication. In the present case, the motive has been proved by the prosecution.

(48) In regard to the seventh chain of circumstances regarding absconding of the accused after the incident, P.W.-1 has deposed that after he showed the place, where the dead body of deceased was buried, he absconded. Thereafter he got the report written and lodged the F.I.R. The Investigating officer has deposed in his

evidence that the F.I.R. was lodged on 22.05.2014 and he searched for the accused/appellant from 22.05.2014 to 26.05.2014 for his arrest and went to his house also but he had absconded and he could be arrested only on 26.05.2014 from Gopamau Trisection in Pihani Hamlet. The Naib Tehsildar has also recorded in the inquest report that the accused/appellant and his family members were absconding. Thus, it is apparent that the accused/appellant had absconded after lodging N.C.R. and showing the place of concealment of dead body to the complainant.

- (49)** In the cases based on circumstantial evidence, the conduct of the accused prior to the incident, at the time of incident and after the incident also plays an important role and may corroborate the prosecution case. Thus, the circumstances of the case leads us to consider the conduct of the appellant, which shows that the appellant used to quarrel with his wife on account of her illicit relations with Rajeev and when she went to her father's house due to beating and harassment by the appellant, he went to bring her and brought her on assurance that he would neither beat her nor harass. Thereafter, she went missing on 04.05.2014 at 09:00 in the night but he falsely informed to her father on 06.05.2014 about missing. When his father-in-law started searching for her daughter, the appellant told him that on account of illicit relations of deceased with Rajeev, she would have eloped with him, upon which he asked from Rajeev about it at his house. He denied it,

then he told to appellant about it. Thereafter the accused/appellant lodged the N.C.R. on 17.05.2014 after thirteen days of missing alleging therein that his wife has eloped with Rajeev on 04.05.2014 at 09:00 in the night on account of their illicit relations. Thereafter, when his father-in-law came to know about murder of the deceased by the accused/appellant and asked rigorously from him, he told that he has murdered her and showed place of concealment of dead body and thereafter he absconded and after the F.I.R. was lodged on 22.05.2014, he was not traceable and he could be arrested only on 26.05.2014. Thus, the conduct of the appellant is a relevant fact under Section 8 of the Indian Evidence Act, 1872 and corroborates the prosecution case.

(50) Section 8 of the Indian Evidence Act, 1872, which alongwith relevant illustrations (f) and (i), relevant in the case in hand are extracted herein below:-

"8. Motive, preparation and previous or subsequent conduct.- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Illustration (f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence - "the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

Illustration (i) A is accused of a crime.

The facts that, after commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal

things which were or might have been used in committing it, are relevant."

(51) In view of above, the conduct of an accused, previous or subsequent to the committing of crime is also relevant for considering his complicity in the crime because it is commonly seen that the conduct of an accused speaks of itself. The Hon'ble Supreme Court, in the case of **State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru**; (2005) 11 SCC 600, has held that the conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. The relevant paragraphs 205 and 206 are extracted below:-

"205. Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either a previous or subsequent conduct. There are two Explanations to the section, which explain the ambit of the word "conduct". They are:

"Explanation 1.—The word 'conduct' in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact.

Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute "conduct" unless those statements "accompany and explain acts other than statements". Such statements accompanying the acts are considered to be evidence of res gestae. Two illustrations appended to Section 8 deserve special mention:

"(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence — 'the police are coming to look for the man who robbed B', and that immediately afterwards A ran away, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds

of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.”

206. *We have already noticed the distinction highlighted in Prakash Chand case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 CrPC. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as “conduct” under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . In Om Prakash case [H.P. Admn. v. Om Prakash, (1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975] this Court held that: (SCC p. 262, para 14)*

“[E]ven apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused.”

(52) The Hon'ble Supreme Court, in the case of **V. Prabhakara Vs.**

Basavaraj K. (Dead) by legal representatives and another;

(2022) 1 SCC 115, has held that conduct of a party would be

construed as a fact under Section 8 and such a conduct may either

be a previous or subsequent one. It is the product of a motive or a

preparation. The relevant portion of para 14 is extracted here-in-

below:-

"14. Section 3 of the Evidence Act defines “a fact”. Conduct of a party would be construed as a fact under Section 8. Such a conduct may either be a previous or subsequent one. It is the product of a motive or a preparation. When evidence is given on the conduct of a party and if it is proved to the satisfaction of the court particularly when it involves an admission, adequate weightage is required to be given. Such a conduct would include a silence emanating from a party who is expected to speak and express....."

(53) Coming to the facts of the present case, the conduct of the

appellant, as discussed above, shows his complicity in murder of

his wife and refers towards the guilt of the appellant only and supports the prosecution case.

- (54) In regard to the eighth chain of circumstances regarding recovery of the spade on the pointing out of the accused, it has been proved by the P.W.-1, P.W.-5 and P.W.-6 that the body of the deceased was recovered from the ditch near the pond at a distance of about 400 meters from the house of the accused/appellant. The P.W.-6, Investigating Officer has also deposed in his evidence that on 26.05.2014, when the accused/appellant was arrested, he made extra judicial confession of murdering his wife by pressing her neck from a rope and concealing her dead body by digging a ditch from the spade and also got the recovery of spade made from his house and proved the recovery memo of spade as Ext. Ka.13 and site plan of place of recovery as Ext. Ka.14. He also proved the material Ext. 1, which is spade. No cross-examination has been made from the P.W.-6 in regard to the recovery of spade, except a suggestion, in regard to which it has been stated by the P.W.-6 that it is wrong to say that the false recovery was made. Thus, it is apparent that on the basis of extra-judicial confession of accused and on his pointing out, the spade, used in digging of ditch for concealing the dead body of the deceased by the accused, was recovered. A plastic rope was also recovered from the body of the deceased, which may have been used in pressing her neck. Learned trial Court has recorded a finding that the size of rope shows that it could have been used in pressing neck. A

piece of petticoat was also recovered from the dead body of deceased, which matched with the piece of petticoat of deceased found near the place of recovery of dead body, which have been proved by the prosecution witnesses and nothing contrary could be shown. The piece of petticoat may have come out on account of digging by dogs. Thus, the recovery is also in support of the prosecution case. Even otherwise, it is settled in law that non-recovery would not make the prosecution case doubtful if it is otherwise proved.

- (55)** In regard to the ninth chain of circumstances of extra judicial confession by the accused/appellant before P.W.-1 and P.W.-2, the P.W.-1 has deposed in his evidence that on asking from the accused; Pawan rigorously, he confessed that after killing Kusuma, he has concealed her dead body in the pond. He had also shown the place of concealment to the P.W.-1, where the dead body was found. P.W.-1 is real maternal uncle of the accused as well as the father-in-law, therefore, it appears that on account of twin relationship, out of which one is through the sister of the complainant, with a view that he may come to his rescue, the appellant would have made the extra-judicial confession before him. P.W.-2 is father of Rajeev. He has also deposed in his evidence that the accused/appellant had admitted before him that on account of suspicion of illicit relation of his wife with Rajeev, he has killed his wife, which has been discussed above, according to which, the accused/appellant had

killed his wife by pressing her neck from a rope and concealed it aside the pond, however, he changed his version in cross-examination on the same day. However, P.W.-2, in his cross-examination, in response to suggestions, has deposed that it is wrong to say that on 17.05.2014, Pawan had not given any information in regard to killing his wife Kusuma on 04.05.2014 by pressing her neck from rope and concealing her body near the pond of Mathhiya under the ground. He also, in regard to another suggestion, stated that it is wrong to say that the accused/appellant had not given any information that he had no other way out except to kill his wife on account of illicit relations of Rajeev with his wife. He also, in response to a suggestion, stated that it is wrong to say that the accused had not given the threat of dire consequences. Lastly, in regard to a suggestion, he deposed that the accused would not have murdered Kusuma and buried her aside the pond and Rajeev would have eloped her. Thus, it is apparent from his reply to the aforesaid suggestions that he has supported his evidence given in the examination-in-chief. The Hon'ble Supreme Court, in the case of **Mohan Lal Vs. State of Rajasthan**; (2015) 16 SCC 234, has held that when in a cross-examination by the defence, a witness denied the suggestion, then his contradictory statement in cross-examination loses its effect and the evidence in the examination-in-chief is reaffirmed, thus, is believable.

(56) The P.W.-6, Investigating Officer has also deposed in his evidence that on 26.05.2014, when the accused/appellant was arrested, he made extra judicial confession of murdering his wife by pressing her neck from a rope and concealing her dead body by digging a ditch from the spade and also got the recovery of spade made from his house and proved the recovery memo of spade as Ext. Ka.13 and site plan of place of recovery of spade as Ext. Ka.14. He also proved the material Ext. 1, which is spade. No cross-examination has been made from the P.W.-6 in regard to the recovery of spade, except a suggestion, in regard to which it has been stated by the P.W.-6 that it is wrong to say that the false recovery was made.

(57) The confession in police custody can not be proved under Section 26 of the Indian Evidence Act, 1872, but when any recovery is made in furtherance of a disclosure statement made by accused, it becomes the relevant fact and upon proved before Court of law, it can not be discarded. The Hon'ble Supreme Court, in the case of **Anter Singh Vs. State of Rajasthan; (2004) 10 SCC 657**, has dealt with the various requirements of Section 27 of The Indian Evidence Act, 1872 and placing reliance on the extra judicial confession. The relevant paragraphs 14 to 16 are extracted hereinbelow:-

"14.The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Section 25 and 26. It is not necessary in this case to consider if this Section qualifies, to any extent, Section 24, also. It will be seen that

the first condition necessary for bringing this Section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. (See Mohammed Inayuttillah v. The State of Maharashtra (AIR 1976 SC 483)).

15. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Palukuri Kotayya's case (supra) and in Udai Bhan v. State of Uttar Pradesh (AIR 1962 SC 1116).

16. The various requirements of the Section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible"

(58) Similar view has been taken by the Hon'ble Supreme Court in regard to the extra-judicial confession in the case of **Kattavellai @ Devakar Vs. State of Tamil Nadu (Supra)**.

(59) One of the arguments of learned counsel for the appellant was that in the facts and circumstances of the case, both the views are possible and in case, two views are possible, then the view favorable to the accused should be taken. The Hon'ble Supreme Court, in the case of **Kali Ram Vs. State of Himachal Pradesh (Supra)**, has held that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. It has further been held that in arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures.

- (60) Similar view was taken by the Hon'ble Supreme Court in the case of **Govindaraju alias Govinda Vs. State By Sriramapuram Police Station and another (Supra)**. In the said case, the Hon'ble Supreme Court, has also held that it is not the number of witnesses that matters but it is the substance and if the prosecution can bring home the guilt of the accused even with a limited number of witnesses, there is no need of examining large number of witnesses. Thus, the contention of learned counsel for the appellant that one material witness, Nanda has not been examined is also misconceived and not tenable as the prosecution has to decide for producing the witnesses and it has proved the case beyond reasonable doubt by the evidence adduced before the learned Trial Court, therefore, it is immaterial.
- (61) The Hon'ble Supreme Court, in the case of **Krishnegowda & others Vs. State of Karnataka by Arkalgud Police (Supra)**, has held that there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy. It has also been held that the Court should always make an endeavor to find the truth. A criminal offence is not only an offence against an individual but also against the society. Thus, the contention of learned counsel for the appellant that since the complainant was related witness,

as he was father of deceased, therefore, his testimony is not believable, is not tenable.

(62) The Hon'ble Supreme Court, in the case of **Balaram Vs. State of Madhya Pradesh (Supra)**, considered the case of **Vadivelu Thevar Vs. The State of Madras**; 1957 SCC OnLine 13, and upon considering three kinds of witnesses i.e. wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable, has held that if the witness is wholly reliable, there is no difficulty inasmuch as relying on even the solitary testimony of such a witness conviction could be based. It has also been held that the court is required to separate the chaff from the grain to find out the true genesis of the incident. The relevant paragraphs 14 and 15 are extracted herein below:-

“14. It is well settled, as laid down in a locus classicus case of Vadivelu Thevar v. State of Madras [Vadivelu Thevar v. State of Madras, 1957 SCC OnLine SC 13 : AIR 1957 SC 614] , there are three types of witnesses, which are

(i) wholly reliable,

(ii) wholly unreliable, and

(iii) neither wholly reliable nor wholly unreliable.

The law laid down in Vadivelu Thevar [Vadivelu Thevar v. State of Madras, 1957 SCC OnLine SC 13 : AIR 1957 SC 614] is consistently followed by this Court in a catena of judgments.

15. It can thus be seen that, there are three types of witnesses. If the witness is wholly reliable, there is no difficulty inasmuch as relying on even the solitary testimony of such a witness conviction could be based. Again, there is no difficulty in the case of wholly unreliable witnesses inasmuch as his/her testimony is to be totally discarded. It is only in the case of the third category of witnesses which is partly reliable and partly unreliable that the court faces the difficulty. The court is required to separate the chaff from the grain to find out the true genesis of the incident.”

- (63) In view of above, the testimony of one reliable witness is sufficient to record the conviction. Similar view has been taken by the Hon'ble Supreme Court in the case of **State of Madhya Pradesh Versus Ramjan Khan and others (Supra)**, however, it was a case of ocular evidence. The case of **Chhote Lal Vs. Rohtash and others (Supra)** has been passed in the facts of the case, therefore, is of no assistance to the case of the appellant.
- (64) Learned Trial Court, after considering the evidence and material on record, has recorded findings on the aforesaid chain of circumstances and in view of the aforesaid findings, this Court is in agreement with the findings recorded by the learned Trial Court. Thus, not only the chain of circumstances are complete in the manner, on account of which, it is irresistible conclusion that the accused is the only author of the crime of murder of his wife and concealment of her dead body but his conduct, as discussed above, is also in corroboration to the chain of circumstances.
- (65) In view of above and upon considering the over all facts and circumstances of the case, this Court is of the view that the learned Trial court has passed the impugned judgment and order after considering the evidence and material on record and dealing it appropriately by a reasoned and speaking order. The appeal has been argued on misconceived and baseless grounds, which is liable to be dismissed.

- (66) The appeal is, accordingly, **dismissed**, upholding the impugned judgment and order passed by the learned Trial Court and confirming the sentence awarded by it.
- (67) Let a copy of this judgment alongwith the Trial Court's record be transmitted to the Court concerned forthwith and in any case within two weeks from today for information and compliance.

(Mrs. Babita Rani, J.) (Rajnish Kumar, J.)

Order Date :- 08.07.2026
Saurabh