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Court No. - 83

Case :- CRIMINAL APPEAL No. - 3333 of 1984

Appellant :- Smt. Vidya Devi And Others

Respondent :- State of U.P.

Counsel for Appellant :- A.B.L. Gour, Pradeep Kumar Mishra

Counsel for Respondent :- D.G.A.

Hon'ble Arvind Kumar Mishra-I,J.

Hon'ble Mayank Kumar Jain,J.

(Per: Mayank Kumar Jain,J.)

1. This criminal appeal has been preferred by the appellants against the judgment and order of sentence dated 29.11.1984 passed by the 6th Additional Sessions Judge, Etah arising out of Case Crime No. 134 of 1983, registered as Sessions Trial No. 824 of 1984 (State Vs. Vidya Devi and others), whereby the learned Additional Session Judge had convicted the appellants Smt. Vidya Devi, Netrapal, and Ram Kripal under Sections 302 / 34 I.P.C. and 201 I.P.C and had sentenced them to undergo life imprisonment under Section 302/34 I.P.C. and rigorous imprisonment of 3 years along with a fine of Rs. 2,000/- each under Section 201 I.P.C. In case of default in the payment of the fine, they were sentenced to undergo additional rigorous imprisonment for six months.

2. Two appellants namely Netrapal and Ram Kripal died during the pendency of this appeal and the appeal qua them stood abated vide order dated 10.07.2018 passed by this Court. The only surviving appellant is Smt. Vidya Devi.

3. Brief facts of the case are that Shiv Raj Singh, father of the deceased Asha Devi, submitted a written reportt to Station House Officer, Sidhpura, District Etah stating therein that the marriage of his daughter Asha Devi was performed with the accused Ram Kripal s/o Netrapal

around 3 ½ years ago. “Gauna Ceremony” was performed one year after the marriage post when she started to live with her in-laws. After some time, the accused-appellants Vidya Devi (mother-in-law), Netrapal (father-in-law) and her husband Ram Kripal started to blame his daughter for being of unsound mind, that she did not perform any household work and that she also stole bread. He held “Panchayat” in the village of accused-appellants two to three times but later he brought her daughter back with him. On the occasion of Holi, Netra Pal, father-in-law of his daughter, took Asha Devi back with him after giving an undertaking that she would not be subjected to cruelty or ill-treatment anymore in the near future. The Complainant continued to enquire about the wellness of his daughter. Sometime later, the accused-appellants Vidya Devi and Netrapal asked the Complainant to marry his second daughter with their son Ram Kripal failing which they would not keep her daughter Asha Devi with them. The Complainant refused to concede to the demand and asked them to send back Asha Devi to him, but they refused.

4. Two days before the date of the written report, the accused-appellants Ram Kripal, Netrapal, Vidya Devi and Deo Singh had beaten his daughter and dislodged her from their house. Harvansh Singh, Shiv Lal, Ram Lal Singh, Suraj Pal Singh, Udaiveer Singh and others witnessed the incident and rescued Asha Devi. They had sent her back to her in-laws after making her and her in-laws understand.

5. One day before the date of lodging the first information report, at around 11.00 am one Shiv Lal, a resident of Dhanakar came to him and informed him that Ram Kripal, Netrapal and Vidya Devi have caused the disappearance of his daughter during the preceding night. He along with Sukhram Singh, Allauddin, Bhikey Ali, Hari Shankar Tiwari, Sultan, Raj Kumar and others went to the residence of his daughter at around 5:00 PM. On enquiring about the whereabouts of his daughter, he was told that she was missing and the accused-appellants Ramkripal and Netrapal were absconding. He suspected that these people have killed his daughter and had caused the disappearance of her dead body. He believed that it was

done due to the demand for dowry and the second marriage of Ram Kripal.

6. The Complainant had also filed one written report **Ext. Ka-2** dated 04.01.1982 earlier with the Superintendent of Police Etah mentioning the dowry demand. He had then stated that his daughter Asha Kumari was married to Ram Kripal S/o Netrapal, resident of Dhanakar, Police Station Sidhpura, District Bulandshahr. During the marriage, he had given ornaments made of gold and silver, clothes worth Rs. 2,000/- and other articles worth Rs. 5,000/- to her daughter. But after her marriage, her husband, mother-in-law and father-in-law had been regularly demanding for motorcycle from his daughter, which was beyond his capacity. Asha Devi's husband and her in-laws had been harassing her and threatening to kill her. Ram Kripal also threatened to kill his daughter to perform a second marriage.

7. The written report **Ext. Ka-3** was entered in the Police station concerned at rapat No. 11. (Ext.-Ka 4). Based on this written report, case crime No. 134/82 was registered. The investigation was entrusted to S.I. Tota Ram (PW. 4). He recorded the statements of the complainant and other witnesses. He rushed to village Dhanakar. He recorded the statement of the appellant Vidya Devi. She told him that she along with her son and husband had committed the murder of Asha Devi. They had put her dead body in a gunny bag and after tying it, along with a piece of stone, threw it into a nearby well. On the pointing of the Appellant Vidya Devi, a gunny bag was pulled out from the well. A dead body of a female was recovered from this bag which the Complainant identified as of his daughter, Asha Devi.

8. The inquest report (Ext. Ka-7) was prepared. After the preparation of relevant documents, the dead body was sent for post-mortem. The post-mortem was conducted and a report (Ext. Ka-14) was prepared by the Doctor. During the investigation, the investigation officer executed certain relevant documents, collected the evidence and after the conclusion of the investigation, a charge sheet (Ext. Ka-13) came to be filed u/s 302/201

against the appellants Smt. Vidya Devi, Netrapal and Ram Kripal along with Deo Singh, Rakshpal and Rajpal under Section 302/201 of IPC.

9. The learned trial court framed charges against the appellant/accused Ram Kripal, Netra Pal, Smt. Vidya Devi under Section 302 I.P.C. read with Section 34 I.P.C. and charges under Section 201 I.P.C. against the accused Netrapal, Ram Kripal, Vidya Devi, Deo Singh, Rakshpal and Rajpal. The accused did not plead guilty and therefore they came to be tried by the learned Trial Court for the aforesaid offences.

10. To bring home the charge against the accused, the prosecution examined three witnesses of fact, namely, PW-1 Shiv Raj Singh, (complainant), PW-2 Sukh Ram, PW-3 Udaivir Singh and two formal witnesses namely, PW-4 S. I. Tota Ram (Investigating officer) and PW-5 Dr. S. R. Gupta, Medical Officer. (who conducted the post-mortem)

11. After close of the prosecution evidence, the statement under Section 313 Cr.P.C. of the accused-appellant Vidya Devi was recorded, in which she had admitted that the deceased was married to her son Ram Kripal. She denied all the allegations made against her. She stated that she had never demanded any dowry from Asha Devi. She had never beaten or harassed Asha Devi. The Complainant was never asked to marry his second daughter with her son Ram Kripal. No "Panchayat" took place in their village. She along with her husband and son did not kill Asha Devi. They did not throw the dead body of Asha Devi into the nearby well after putting it inside a gunny bag. She did not give any statement to the Investigating Officer and the body of the deceased Asha Devi was not recovered on her pointing out. The witnesses, deposed falsely against her, being the relatives of the complainant and due to enmity.

12. No evidence in her defense was produced by the appellant before the trial court.

13. Hearing both the sides and after appreciating the evidence, facts and circumstances of the case, the Learned Trial Court recorded conviction and passed the sentence against the appellant as aforesaid.

Accused Deo Singh, Rakshpal and Rajpal were acquitted by the trial Court.

14. Being aggrieved by the impugned judgement and the order, the accused-appellant has preferred the present criminal appeal.

15. We have heard Sri Pradeep Kumar Mishra, learned Amicus Curiae for the appellant and Sri Sunil Kumar Tripathi, Sri Alok Kumar Tripathi, Sri Om Prakash and Sri M. P. Singh Gaur, learned Additional Government Advocates for the State and perused the record placed before us. We have also re-appreciated the entire evidence on record.

16. On the basis of the evidence available on record, it has to be determined as to whether the accused-appellant had committed the murder of Asha Devi and with the intention to cause the disappearance of the evidence, threw away her dead body into the nearby well.

17. Learned counsel for the appellant vehemently argued that Vidya Devi, the surviving appellant, has falsely been implicated in the present case. Admittedly, she is the mother-in-law of the deceased Asha Devi. There is no direct evidence at all thus, the case of the prosecution rests on circumstantial evidence. There is no eyewitness account of the alleged incident since none has seen the appellant committing the murder of Asha Devi. The alleged statement of the appellant made before the police is not admissible in the eye of the law since the appellant Vidya Devi had not been arrayed as an accused and had not been taken into custody till the time of making the alleged statement about the fact that she along with other co-accused had thrown the dead body of the deceased Asha Devi into the nearby well of their house. Therefore, the information relating to the discovery of the dead body of the deceased Asha Devi cannot be considered to be the information as provided under Section 27 of the Evidence Act. To make his submission good learned counsel for the appellant vehemently argued that the information relating to the discovery of the dead body is admissible under Section 27 of the Evidence Act only if the accused is in the custody of a police officer while making such

statement leading to any recovery. In fact, the appellant did not give any statement about the manner of commission of the crime and further the dead body of the deceased was not recovered on her pointing out. It has further been submitted that the mental condition of deceased Asha Devi was not sound and she had committed suicide on account of her disease. It has also been submitted that no proposal was ever made before the complainant Shiv Raj Singh to marry his second daughter with Ram Kripal, the son of the appellant since he was already married to the deceased Asha Devi. It has further been submitted that the deceased Asha Devi was never treated with any kind of cruelty or harassment. No motive has been assigned to the appellant to commit the crime. The judgement passed by the trial court is bad in law, and therefore, the appeal is liable to be allowed.

18. Per contra learned Additional Government Advocate argued that the marriage of the deceased Asha Devi with the son of the appellant is admitted. The relations between deceased Asha Devi and the appellant were not cordial. The prosecution has proved the motive and circumstances by cogent evidence which resulted in the conviction of the appellant by the learned trial court. To fulfill their demand for dowry, the appellant along with other co-accused used to harass the deceased Asha Devi and made false allegations against her that she was a lady of unsound mind, she did not perform household work, and she used to steal bread. The appellants often used to beat her and for no reason, dislodged her from their house. To mount pressure upon the complainant and Asha Devi, the present appellant along with the other accused Netrapal (since died) and Ram Kripal (since died) asked the complainant to perform the marriage of his second daughter with Ram Kripal, their son, while the accused Ram Kripal was already married to the deceased Asha Devi. It has further been submitted that the appellant Vidya Devi along with the other co-accused Netrapal and Ram Kripal killed Asha Devi, put her dead body in a gunny bag and threw it inside the well. It is also submitted that during the investigation, the appellant disclosed the true facts before the

Investigating Officer and on her pointing out, the dead body of the deceased Asha Devi was recovered from the well which was kept in a gunny bag with a piece of stone. The dead body was identified by the complainant to be of his daughter. The learned trial Court after appreciating the documentary as well as the oral evidence available on record rightly convicted and sentenced the appellant.

19. Making the above submissions, learned A.G.A. prayed to dismiss the appeal.

20. As per the prosecution story, Asha Devi, daughter of the complainant was married to Ram Kripal. Her husband and in-laws used to blame her and harass her for dowry. The complainant did not accept the proposal to get his second daughter married to Ram Kripal, so the husband and in-laws of his daughter killed her on 23.08.1983 and caused the disappearance of her dead body. After receiving the written report filed by the complainant, police reached the house of the appellant along with him and other persons including PW-2 Sukhram. During the interrogation with the present appellant Vidya Devi, the manner of commission of the crime was narrated by her that on the preceding night, Ram Kripal (her son) and Netrapal (her husband) held the hands and feet of Asha Devi and strangled her to death and thereafter, threw her dead body in the well with the assistance of the other accused. Upon her pointing out the dead body of Asha Devi was recovered from the well.

21. In view of the aforementioned facts, it is required to be noted that the case of the prosecution rests on circumstantial evidence. There is no direct evidence that can suggest that the appellant had committed the murder of Asha Devi.

22. In **Md. Younus Ali Tarafdar v. State of West Bengal A.I.R. 2020 Supreme Court 1057: A.I.R. Online 2020 SC Page-238** the Hon'ble Supreme Court laid out the factors to be considered while adjudicating the case of circumstantial evidence observed that:-

" There is no direct evidence regarding the involvement

of the Appellant in the crime. The case of the prosecution is on basis of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence as laid down by this Court are :

Admittedly, this is a case of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence laid down by this Court are :-

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established.

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

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

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

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

23. In **Pattu Rajan V. State of Tamil Nadu (2019) 4 SCC 771**, the Apex Court observed the nature of evidence in the case of circumstantial evidence and held that:-

“30. Before we undertake a consideration of the evidence supporting such circumstances, we would like to note that the law relating to circumstantial evidence is well settled. The Judge while deciding matters resting on circumstantial evidence should always tread cautiously so as to not allow conjectures or suspicion, however strong, to take the place of proof. If the alleged circumstances are conclusively proved before the Court

by leading cogent and reliable evidence, the Court need look any further before affirming the guilt of the accused. Moreover, human agency may be faulty in expressing the picturisation of the actual incident, but circumstances cannot fail or be ignored. As aptly put in this oft-quoted phrase: "Men may lie, but circumstances do not".

31. As mentioned supra, the circumstances relied upon by the prosecution should be of a conclusive nature and they should be such as to exclude every other hypothesis except the one to be proved by the prosecution regarding the guilt of the accused. There must be a chain of evidence proving the circumstances so complete so as to not leave any reasonable ground for a conclusion of innocence of the accused. Although it is not necessary for this Court to refer to decisions concerning this legal proposition, we prefer to quote the following observations made in **Sharad Birdhichand Sarda V. State of Maharashtra, (1984) 4 SCC 116 (SCC p. 185 para 153-154) : (AIR 1984 SC 1622, at p. 1655-56, paras 152-153):**

"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 Bobde V. State of Maharashtra* 1973 Cri L.J 1783 where the following observations were made:

Certainly, it is a primary principle that 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, as we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

24. The Hon'ble Supreme Court concerning the cases based on circumstantial evidence in **Ganpat Singh Vs. State of Madhya Pradesh (2018) 2 Supreme Court Cases (Criminal) 159**, held that:-

"There are no eyewitnesses to the crime. In a case which rests on circumstantial evidence, the law postulates a twofold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt. Second, all the circumstances must be consistent only with the guilt of the accused. The principle has been consistently formulated thus:

"The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is

no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence."

25. PW1 Shiv Raj Singh is the informant and father of the deceased Asha Devi, who had stated in his evidence that he performed the marriage of his daughter with accused Ram Kripal and after "*Gauna Ceremony*" his daughter started to live at her in-laws' house. Accused Netra Pal, father-in-law, Ram Kripal, her husband and Vidya Devi, her mother-in-law began to blame her that she was of unsound mind and she used to steal bread. He organized *Panchayat* and brought back his daughter along with him. After some time the accused Netrapal assured him that her daughter Asha Devi would not be subjected to any ill-treatment. With this belief, Asha Devi was sent back with him. After some time, the accused Netrapal and Vidya Devi asked the informant to marry his second daughter with their son Ram Kripal but he did not concede. After 15 to 20 days, he was informed that his daughter was missing. He reached the house of his daughter but she was not found there. The accused persons were also not there. He came to know that his daughter had been killed by her in-laws. He submitted a report to the police station concerned and also accompanied the police to the village of the accused-appellant Vidya Devi. Accused Vidya Devi told that on the fateful night at around midnight, she held Asha Devi's feet, her husband Netrapal held the ears and her son Ram Kripal strangulated Asha Devi to death. To cause the disappearance of the dead body, Ram Kripal and Netrapal called Rakshpal, Ram Pal and Dev Singh. All these people including Vidya Devi, the appellant, put the dead body of Asha Devi in a gunny bag and tied it with a rope of plastic. Ram Kripal carried the gunny bag over his head and threw it into the well near Pursara. Netrapal carried a piece of stone which was also kept inside the bag. The accused Vidya Devi led the investigating officer along with the informant and other persons and

pointed toward the well from where the gunny bag was pulled out containing a dead body of a female which was identified by the complainant as of his daughter. Recovery memo Ext Ka-1 was prepared which bore his thumb impression. This witness has also identified the rope of the plastic and the piece of stone which was found with the dead body. He also stated that the accused were making the demand for a motorcycle from his daughter. He has also proved the written report as Ext. Ka 2.

26. PW2 Sukh Ram in his testimony had stated that he was present in the village along with Bhikari, Allaudin, Shiv Raj Singh and others when Shiv Lal resident of village Dhanakar came and informed that Asha Devi was beaten up by her in-laws and was dislodged from her house. On 20.08.1983 at around midnight, Asha Devi was killed by her in-laws. He along with Shiv Raj Singh and other persons reached the house of Asha Devi and found her missing. Accused Ram Kripal and Netrapal were also not there. Accused Vidya Devi was present there and she told that she along with her husband Netrapal and son Ram Kripal had committed the murder of Asha Devi and had thrown her dead body into a nearby well. PW2 is the witness of the recovery of the dead body and also the witness of the recovery memo.

27. PW 3 Udaivir Singh is the witness of two facts. He is the witness of ill-treatment by the accused of deceased Asha Devi and more importantly, he is the witness of the incident that when he went to ease himself at around 4:00 am, he saw the accused Netrapal, Ram Kripal and Vidya Devi and others heading towards the drainage. Accused Ram Kripal was carrying a gunny bag over his head.

28. PW 4- S. I., Tota Ram is the Investigating Officer of this case, he has executed all the relevant documents during the course of the investigation which are proved by him before the trial court. On the basis of the statement made by the accused Vidya Devi, he recovered the dead body of the deceased Asha Devi from the place pointed out by accused Vidya Devi and prepared the recovery memo Ext. Ka-1. He proved the

statement of accused appellant Vidya Devi as Ext. 5 after filing its copy at the time of his deposition. He prepared the site plan of the place of recovery of the dead body Ext. Ka-6 and also the site plan of the place of occurrence as Ext. Ka-12. Apart from these, inquest report Ext. Ka-7, Challan dead body Ext Ka-8, Photo of the dead body Ext. Ka-9, Letter to R.I. and C.M.O. Ext. Ka 10 and Ext. Ka-11 respectively, were also prepared. The dead body was sent for post-mortem by him. After recording the evidence of witnesses and concluding the investigation, he filed the charge sheet against the accused persons being Ext. Ka-13. This witness had proved the gunny bag, piece of stone, and piece of rope as the material exhibits.

29. PW 5, Dr. R. S. Gupta has stated that on 24.08.1983, he conducted the post-mortem of the deceased Asha Devi and prepared his report which is proved as Ex. Ka14. He found the following injuries;-

“No superficial external injury seen on her body but hematoma was present in the neck muscles on both sides. Corua of Hyoid bones and thyroid cartilage was found fractured on both the sides. Trachea larynx pharynx are grossly congested. ”

According to him, the death of Asha Devi had taken place 3-5 days before the date of post-mortem. In his opinion the cause of death was asphyxia.

30. The present case of the prosecution consisted on the following circumstances:-

- (i) Motive available to the appellant
- (ii) Causing the disappearance of the evidence by the appellant.
- (iii) Recovery of the dead body of deceased Asha Devi on the pointing of appellant Vidya Devi.
- (iv) Consistency of medical evidence.

31. It requires to adjudicate as to whether the circumstances form a complete chain of events that would indicate that the appellant Vidya

Devi along with other co-accused committed the murder of deceased Asha Devi and caused the disappearance of her body.

(i) Motive available to the appellant

32. The motive behind the murder of Asha Devi is stated by PW1 Shiv Raj Singh in his testimony, that the appellant along with her husband and her son used to harass his daughter and blame her for being of unsound mind and that she used to steal bread. He organised a 'Panchayat' in the village to resolve the dispute failing which he brought back his daughter with him. After some time, on receiving assurance from the in-laws of his daughter that she would not be subjected to harassment in the future, he sent his daughter with her father-in-law Netrapal. He also stated that the appellant and her husband had asked him to marry his second daughter with their son Ram Kripal failing which they would not keep Asha Devi with them. This demand was turned down by him. The statement of PW1 Shiv Raj Singh is corroborated by PW3 Udaiveer Singh. The testimonies of PW1 Shiv Raj Singh and PW3 Udaiveer Singh with regard to strained relations between the deceased Asha Devi and her in-laws and regular harassment made by the appellant are trustworthy and have no material contradictions. Therefore, it is established that the appellants were not happy with the deceased Asha Devi and they had wanted to re-marry their son. Therefore, had the motive to eliminate Asha Devi.

(ii) Causing the disappearance of the evidence by the appellant

33. PW 3 Udaiveer had stated in his evidence that at around 4:00 a.m., he went to ease himself. He saw from a distance of 10 yards that the accused/ appellant Netrapal, Ram Kripal and Vidya Devi along with other persons were heading towards the drainage. Ram Kripal was holding a gunny bag over his head. In his cross-examination, he stated that the Investigating Officer recorded his statement three days after the aforesaid incident.

34. The evidence of PW3 Udaiveer forms an important chain of event which indicates that in the early morning, at around 4 am, after the fateful

night, the appellant Vidya Devi along with other accused was seen by him when they were heading towards the drainage and the son of the appellant Ram Kripal was holding a gunny bag over his head. The dead body of the deceased Asha Devi was recovered from the same well. Therefore, the aforesaid evidence forms a chain of the continuing process towards the recovery of the dead body of the deceased Asha Devi. It thus indicates that after committing the murder of Asha Devi, the appellant Vidya Devi and other co-accused threw the body in a nearby well. All the appellants were seen by PW3 Udaiveer Singh when they were heading to cause the disappearance of the dead body. Therefore, the evidence of PW3 is important evidence under the circumstances of this case.

(iii) **Recovery of the dead body of deceased Asha Devi on the pointing of appellant Vidya Devi:-**

35. PW-1 Shiv Raj Singh stated in his evidence that after receiving the information from Ravi Lal about the missing whereabouts of his daughter the accused Ram Kripal and Netrapal being absconding, he submitted a written report to the police station. He along with other persons accompanied the police party and reached village Dhanakar. Accused Vidya Devi was present there and on interrogation, she disclosed that on the night of the 20th at around midnight, she along with her husband and her son had committed the murder of Asha Devi. The dead body of Asha Devi was kept in a gunny bag which was carried by Ram Kripal over his head and thrown into the well. She also stated that she can get the body recovered from the well. Based on this statement, the informant, with other persons, reached the site of the well and found a gunny bag inside it which was carried out and the dead body of his daughter was recovered. Recovery memo Ex. Ka1 was prepared which bore his thumb impression. PW2 Sukhram Singh also corroborated the evidence of PW1 Shiv Raj as he had also accompanied Shiv Raj Singh to Village Dhanakar and the dead body was also recovered in his presence on the pointing of the accused-appellant Vidya Devi.

36. PW4 S.I. Tota Ram, the Investigating Officer has proved the recovery memo of the dead body of the deceased Asha Devi. This witness has also proved the recovery of the gunny bag, the piece of stone and the piece of rope as material exhibits.

37. It is also pertinent to narrate here the inquest report (Ex Ka 7) which discloses that the body of deceased Asha Devi was recovered in the presence of the informant and other witnesses by the investigating officer on 23.08.1983. When the investigating officer reached the site of the well, he was shown by the villagers that a gunny bag was floating on the surface of the water. The bag was pulled out and it was opened. A dead body of a female along with a piece of stone was recovered. The body had been tied with a plastic rope which was identified by the informant as that of his daughter Asha Devi. These facts also corroborate the fact that the accused-appellant had caused the disappearance of the evidence.

38. Learned Counsel for appellant Shri Pradeep Kumar Mishra strongly urged that the appellant Vidya Devi was not in the custody of the Investigating Officer and had not been arrayed as an accused, therefore, the information relating to the discovery of the dead body of the deceased Asha Devi is not admissible under Section 27 of the Evidence Act. He further submitted that the information leading to the discovery is admissible only if the person accused of an offence is in the custody of a police officer and not otherwise.

39. In **Sangam Lal Vs. State of U.P. 2002 (44) ACC 288**, the Hon'ble Division Bench of this Court has observed that:-

“The question which requires consideration here is what is the meaning of the word “custody” and whether a person can be said to be in custody only after he has been formally arrested by the police officer. The dictionary meaning of the word “custody” is—the act or duty of carrying and preserving; protection. In Guardian and Wards Act, the word “custody” refers not only to actual but also to constructive or legal custody. In Maharani v. Emperor,¹ this question was considered and it was held as follows:

“the word ‘custody’ in Section 26 or 27, Evidence Act, does not mean ??? custody, but includes such state of affairs in which the accused can be said to have come into the hands of a police

officer or can be said to have been under some sort of surveillance or restriction.”

In Chotey v.State of U.P.² the Court after referring to the aforesaid decision observed that there is distinction between an accused being “under arrest” and an accused being in “custody”. In Re. Rant Chandran, AIR 1960 Madras 191, it was ruled that the interpretation of the word “custody” in various decisions has proceeded in so far as of suggest that “police custody” in terms of Section 27 might well include surveillance, interrogation before arrest etc. Where a person submits himself to the custody of a police officer with the consciousness that temporarily at least he is in such custody, or such control, whether formally authorised in some manner or otherwise. This question has been considered threadbare in the Constitution Bench decision of the Apex Court in State of U.P. v.Deoman Upadhaya,³ wherein para 12 of the reports, it was held as under:

“(12) There is nothing in the Evidence Act which precludes proof of information given by a person not in custody which relates to the facts thereby discovered; it is by virtue of the ban imposed by Section 162 of the Cr. P.C., that a statement made to a police officer in the course of the investigation of an offence under Ch. 14 by a person not in police custody at the time it was made even if it leads to the discovery of a fact is not provable against him at the trial for that offence. But the distinction which it may be remembered does not proceed on the same lines as under the Evidence Act, arising in the matter of admissibility of such statements made to the police officer in the course of an investigation between persons in custody and persons not in custody, has little practical significance. When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody, submission to the custody by word or action by a person is sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the “custody” of the police officer within the meaning of Section 27 of the Indian Evidence Act:.....A person who has committed an offence, but who is not in custody, normally would not without surrendering himself to the police give information voluntarily to a police officer investigating the commission of that offence leading to the discovery of material evidence supporting a charge against him for the commission of the offence.....”

17. The law is, therefore, well settled that in order to attract Section 27 of the Evidence Act, it is not necessary that the accused should have been under arrest and it is enough if he has come into the hands of a police officer or is under some sort of surveillance or restriction. A person giving information to the police officer may be deemed to have submitted himself to the

custody of the police officer within the meaning of Section 27 of the Evidence Act.”

40. In view of the observation made by the Hon'ble Division Bench of this Court in the aforesaid case, we are also of the view that since the appellant Vidya Devi was interrogated by the investigating officer and consequently she stated the manner of commission of the crime by her along with the other family members and that on her pointing out, the dead body of the deceased was recovered from the well which was later identified by PW1 the informant/father of the deceased. PW 4 S. I. Tota Ram has proved the statement of Accused appellant Vidya Devi by his evidence as Ex. Ka- 5, therefore, the recovery of the dead body of the deceased Asha Devi on the pointing out of the appellant Vidya Devi is admissible under Section 27 of the Evidence Act.

(iv) Consistency of Medical Evidence

41. The medical evidence is in consonance with the oral evidence of the witnesses. PW5 Dr. R. S. Gupta stated in his evidence that he conducted the post-mortem of the body of the deceased Asha Devi on 24.08.1983. He found that no superficial external injuries were seen on her body but hematoma was present in the neck muscles on both sides. Corua of Hyoid bones and thyroid cartilage was found fractured on both the sides. Trachea larynx pharynx were grossly congested. In his opinion, the cause of death was asphyxia as a result of A.M.I. Further, he stated that the duration of death was 3 to 5 days before. Given the facts and circumstances of the case, the medical report corroborates the case of the prosecution and the ante mortem injuries found on the body of the deceased Asha Devi prove that the death was caused due to asphyxia as a result of strangulation.

42. It is admitted fact that deceased Asha Devi was with her in-laws when at the time of her death. Since the death of Asha Devi occurred in the house of appellant Vidya Devi, therefore, a burden lies upon the appellant to explain the circumstances under which deceased Asha Devi died.

43. In **Sudru v. State of Chhattisgarh, (2019) 8 SCC 333**, the Hon'ble Apex Court observed that :-

“In this view of the matter, after the prosecution has established the aforesaid fact, the burden would shift upon the appellant under Section 106 of the Evidence Act. Once the prosecution proves, that it is the deceased and the appellant, who were alone in that room and on the next day morning the dead body of the deceased was found, the onus shifts on the appellant to explain, as to what has happened in that night and as to how the death of the deceased has occurred.

9. In this respect reference can be made to the following observation of this Court in Trimukh Maroti Kirkan v. State of Maharashtra [Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] : (SCC p. 694, para 21)

“21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.”

44. On the basis of the above discussion, we conclude that all the circumstances clearly indicate that the appellant with the other co-accused committed the murder of her daughter-in-law Asha Devi. The motive of the incident is also proved by the prosecution with the evidence of PW-1 Shiv Raj Singh and PW2 Sukh Ram. The evidence of PW3 Udaiveer connects the chain of events as he saw appellant Vidya Devi with other co-accused carrying the dead body of the deceased Asha Devi in a gunny bag which was later thrown into the nearby well by them to cause the disappearance of the evidence. The dead body of Asha Devi was recovered on the pointing out of the appellant Vidya Devi. The medical evidence is quite consistent with the prosecution case and there is no material available on record to disbelieve the medical evidence adduced by Dr. R. S. Gupta. Moreover, the appellant Vidya Devi and the other co-accused did not offer any cogent explanation that they have not committed the murder of deceased Asha Devi. The appellant failed to discharge her burden as cast upon her u/s 106 of the Evidence Act, 1872. All this evidence indicates that appellant Vidya Devi along with the other co-accused is the author of the crime and she committed the murder of her

daughter-in-law Asha Devi. The prosecution has succeeded to bring home the charge against the appellant u/s 302/34 and 201 IPC beyond a reasonable doubt. The trial court has rightly convicted and sentenced the appellant Vidya Devi. Therefore, the impugned judgment and order of the trial court do not require any interference and are liable to be affirmed.

ORDER

45. The criminal appeal is accordingly dismissed.
46. The Appellant is on bail. Her personal bonds and surety bonds are cancelled. She be taken into custody forthwith and be sent to jail to serve out the remaining part of the sentence.
47. Let the certified copy of this order be transmitted to the trial court for compliance.
48. The lower Court record be also transmitted to the court concerned.

Order Date: 24.11.2022

AKT

(Mayank Kumar Jain, J) (Arvind Kumar Mishra-I, J)