SUPREME COURT OF INDIA

Jayabalan

Vs.

U.T. of Pondicherry

Crl.A.No.1246 of 2002

(Dalveer Bhandari and Dr. Mukundakam Sharma JJ.)

06.11.2009

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. In the present appeal, the appellant has challenged the legality of the judgment and order dated 04.09.2002 passed by the Madras High Court. The appellant is aggrieved by the aforesaid judgment and order as by the said judgment the High Court reversed the order of acquittal passed by the trial Court and convicted the present appellant under Section 302 of the Indian Penal Code (in short "the IPC") and sentenced him to undergo imprisonment for life.

3. The appellant - Jayabalan and the deceased - Vasanthi, got married on 05.09.1988 and out of the aforesaid wedlock, two children were born. The couple was living just opposite to the house of the

deceased's parents, the two houses i.e. of the appellant and that of the deceased's parents being separated by a 20 feet wide road. The deceased, at the time of her death, was employed as a nurse in the T. B. Hospital, Pondicherry and the appellant was employed as a teacher in Alankuppam Government School, Pondicherry. The relationship between the appellant and the deceased was stated to be strained. The appellant used to collect the salary of the deceased and also used to be very strict in allowing the deceased to spend her money. The appellant was also in the habit of suspecting the fidelity of the deceased whenever she would talk to a male person. On account of this, there used to be frequent quarrels between the couple. In July 1992, about two months prior to the date of the incident, the deceased is said to have complained to her parents that she apprehended threat to her life from the appellant. Just fifteen days prior to the date of the incident, there was a quarrel between the couple in connection with the ear piercing ceremony of their children. It has been alleged that while the appellant wanted to spend lavishly and celebrate the ear piercing ceremony along with the ear piercing ceremony of his brother's children, the deceased did not agree to it, and on the contrary wanted the function to be as simple as possible without incurring much expenditure. The ear piercing ceremony was fixed for 01.06.1992.

4. On the fateful day of 29.05.1992, the deceased went to her parental house in the morning with her children and took her breakfast there and thereafter she came back to her own house leaving behind her child in her parental house. At about 9.10 a.m., when the baby started crying, the younger sister of the deceased, Chitra (PW-3) took the child and went to the house of the appellant and she left the child there after informing about the same to the deceased. At about 9.25 a.m., the brother of the deceased, Ravi Kumar (PW-1) and also the sisters (PW-3 and PW-4) of the deceased heard the screams of the deceased. On hearing the said screams they immediately went to the house of the appellant and found the appellant jumping and coming out from the bathroom without any clothes on him. The appellant having suffered burn injuries on his body requested PW-1 to call for an auto rickshaw. PW-1 took the baby and handed him over to PW-3 and requested their neighbor Narayanan (PW- 5) to fetch an auto rickshaw and when the auto rickshaw arrived, the appellant got into it along with one Illango (PW-6), who was asked to accompany the appellant to the hospital. The appellant along with PW-6 then proceeded to the Jawaharlal Nehru Institute of Medical Education and Research, Pondicherry where the appellant was attended to at 9.45 a.m. for the burn injuries sustained by him.

5. Immediately after the appellant and PW-6 left for the hospital, PW-1, PW-3, PW-4 as well as PW-5, came inside the house of the appellant and on realising the screams of the deceased to be emanating from the bathroom, found the deceased to be burning inside the bathroom. As the bathroom door was bolted from inside and could not be opened, they broke open the door with a crow bar. They immediately covered the deceased with gunny bags and put off the fire. The deceased was stated to be conscious when she was lifted from the bathroom. When PW-1 asked the deceased as to what had happened, she told that the appellant had beaten her and had, after pouring kerosene oil set her on fire. They brought her to the hall and there she died. A fresh injury was also noticed on the forehead of the deceased just above her left eye on the face and her body was completely burnt.

6. In the meanwhile, at about 9.30 a.m., one Premila, a neighbor is said to have informed the control room, Pondicherry about the occurrence. The said information was recorded by the Assistant Sub Inspector (PW-10) and was passed on by wireless to the Sub Inspector (PW-13) of the D. Nagar Police Station. On receiving such information, PW-13 immediately proceeded to the spot of occurrence and obtained a complaint from PW-1. Thereafter, he returned to the police station and registered an FIR under Section 302 IPC at 11.10 a.m.

7. After completion of the investigation, the police filed a charge sheet against the appellant. On the basis of the aforesaid charge sheet, the trial Court framed charge under Section 302 IPC to which the appellant pleaded not guilty and claimed trial.

8. During the trial, a number of prosecution witnesses were examined. The defence, however, did not produce any witnesses. On conclusion of the trial, the trial Court by its judgment and order dated 07.10.1994 acquitted the appellant of the charge framed under Section 302 IPC against him.

9. Aggrieved by the aforesaid order of acquittal passed by the trial Court, the State preferred an appeal to the High Court. The High Court entertained the said appeal and heard the counsel appearing for the parties. On conclusion of the arguments the High Court passed a judgment and order by reversing and setting aside the order of acquittal passed in favour of the appellant and convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life. The said order of conviction passed by the High Court is under challenge in this appeal.

10. Mr. U.U. Lalit, learned senior counsel appearing on behalf of the appellant, very painstakingly argued the appeal before us. He highlighted various aspects which were relied upon by the trial Court for basing its order of acquittal and relying on the same, he submitted that the High Court was not justified in setting aside the order of acquittal, for what the High Court had found proved was only a plausible or possible view and version, which did not find favour with the trial Court. He referred to a number of decisions in support of his contention that the High Court was not justified in setting aside the order of acquittal so lightly. He also submitted that the High Court was not justified in relying upon the oral dying declaration made by the deceased as the same appears to be doubtful. In support of the aforesaid contention, he relied upon the evidence of PW-5, who, according to the counsel, had failed to support the case of the prosecution on the aspect of dying declaration. He further submitted that the High Court committed an error in convicting the appellant solely on the basis of the dying declaration of the deceased and

on the evidence of the interested witnesses. According to him, the first information report was a result of deliberations and consultations which is proved from the fact that considerable delay was made in recording the FIR as well as in forwarding the same to the Magistrate. He also submitted that the accused himself suffered burn injuries in the process of saving his wife, and therefore, the High Court was not justified in upholding him guilty of committing murder of his wife.

11. On the other hand, Mr. V. Kanagaraj, learned senior counsel appearing on behalf of the State submitted that the allegation of murder made against the appellant is proved and based on clinching evidence. He forcefully denied the suggestion of the counsel appearing for the appellant that it was a case of self-immolation by the deceased. In order to refute the said allegation, Mr. Kanagaraj relied upon the conduct of the deceased. He invited our attention to the fact that on the day of the occurrence, the deceased requested her parents to come back from the Government hospital, where mother of the deceased was to go for some medical treatment as the deceased had to go to the hospital for attending the second shift duty. He emphasized that such conduct on part of the deceased clearly indicated that she had no intention of committing suicide as she was contemplating going to work on that day. This, according to the counsel for the State, proves the fact that it was not a case of either suicide or self-immolation but a pure and simple case of murder. He referred to and heavily relied on the conduct of the appellant at the time of incident and immediately after the incident in order to point out the guilt of the appellant. Heavy reliance was placed on the dying declaration of the deceased.

12. Before dwelling into the evidence on record and before addressing the rival contentions made by the parties, we would like to reiterate the well established legal position with regard to the scope of interference with an order of acquittal. It is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence with which the accused person starts in the trial Court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial Court which recorded the order of acquittal.

13. In Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 this Court observed as follows in para 5:

"5. ... An appellant aggrieved by the overturning of his acquittal deserves the final court's deeper concern on fundamental principles of criminal justice. ... But we hasten to add even here that, although, the learned Judges of the High Court have not expressly stated so, they have been at pains to dwell at length on all the points relied on by the trial court as favourable to the prisoners for the good reasons that they wanted to be satisfied in their conscience whether there was credible testimony warranting, on a fair consideration, a reversal of the acquittal registered by the court below. In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration. In our view the High Court's judgment survives this exacting standard."

14. In Bishan Singh v. State of Punjab, (1974) 3 SCC 288, this Court aptly summarized the legal

position as follows in para 22:

"22. It is well settled that the High Court in appeal under Section 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as: (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

15. In Chandrappa v. State of Karnataka, (2007) 4 SCC 415 this Court held as follows in para 42:

"42. ... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, `substantial and compelling reasons', `good and sufficient grounds', `very strong circumstances', `distorted conclusions', `glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of `flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. Recently, this Court in the case of Ghurey Lal v. State of U.P., (2008) 10 SCC 450, observed as follows in para 50:

"50. A Constitution Bench of this Court in M.G. Agarwal v. State of Maharashtra observed as under:

(AIR pp. 205 & 208, paras 16 & 17)

There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate court the High Court is generally slow in disturbing the finding of fact recorded by the trial court, particularly when the said finding is based on an appreciation of oral evidence because the trial court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. ...

The test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case, and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse.

The question which the Supreme Court has to ask itself, in appeals against conviction by the High Court in such a case, is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial court was erroneous. In

answering this question, the Supreme Court would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court."

(emphasis underlined)

17. One of us (Bhandari J.) summarized the legal position in Ghurey Lal case (supra) as follows in paras 69 and 70:

"69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached--one that leads to acquittal, the other to conviction--the High Courts/appellate courts must rule in favour of the accused."

18. Further, in the case of Raj Narain v. State of U.P. and Ors. [Criminal Appeal Nos. 891-892 of 2002 decided on 18.09.2009], this Court reiterated the aforesaid view and held that even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal. However, this Court will not hesitate to interfere with such order if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust [See also Chikkarangaiah and Ors. v. State of Karnataka Criminal Appeals No. 634-635 of 2002 decided on 02.09.2009]

19. In light of the aforesaid well settled legal position, we have carefully scrutinized the evidence available before us in detail. Admittedly, the marital life of the deceased with the appellant was not smooth and the relationship between the couple was strained and not cordial. The four prosecution witnesses, viz. PW-1, PW-2, PW-3, and PW-4 have clearly stated in their testimonies before the trial Court that the appellant did not allow the deceased to spend her money and used to suspect her fidelity. These witnesses have also stated that quarrels between the couple was a frequent

phenomenon and that on one occasion about two months prior to the occurrence, the deceased had come back to her maternal house apprehending danger to her life from the appellant. It was only on the persuasion of her parents that the deceased returned to her matrimonial house. It was also brought to light by the aforesaid prosecution witnesses that even 15 days prior to the occurrence, there was a quarrel between the couple with reference to the ear piercing ceremony of their children. The appellant wanted to spend lavishly for that ceremony and wanted it to be conducted along with his brother's children, which the deceased objected to as she wanted it to be a simple affair involving minimal expenditure.

20. With regard to the issue of dying declaration raised by the appellant, it is well established legal position that a dying declaration can be made the sole basis of conviction of an accused provided the dying declaration is found to be true and voluntary and is not a result of tutoring or prompting or a product of imagination. This Court in the case of Paniben v. State of Gujarat (1992) 2 SCC 474 has succinctly summarized the law on the point as follows in para 18:

"18. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for

eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P.)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav 2;

Ramawati Devi v. State of Bihar).

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v.

Public Prosecutor).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P.)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P.)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P.)

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu)

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. Surajdeo Oza v. State of Bihar)

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P.)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan)"

21. The same view has been consistently taken by this Court in numerous subsequent decisions. Reliance may be placed on the decision of this Court in Jai Karan v. State of Delhi (1999) 8 SCC 161; Muthukutty v. State (2005) 9 SCC 113; Sham Shankar Kankaria v. State of Maharashtra (2006) 13 SCC 165; Mohanlal v State of Haryana (2007) 9 SCC 143; Vikas v. State of Maharashtra (2008) 2 SCC 516. Reverting back to the factual position of the present case, it is the contention of the appellant that the High Court erred in relying upon the oral dying declaration made by the deceased. PW-1 has categorically stated in his deposition before the trial Court that when PW-1, with the help of PW-3 and PW-5 lifted the body of the deceased in order to bring her out from the bathroom where she was burning, PW1 had asked the deceased as to what had happened, upon which, the

deceased told them that the appellant had beaten and burnt her after pouring kerosene oil on her. On the other hand, PW-5, in his deposition, has stated that the deceased was murmuring and, thus, he was not in a position to hear what the deceased had said. We are of the considered view that there exists no inconsistency between the two statements given by PW-1 and PW-5. From a careful perusal of the statement of PW-5, it cannot be inferred by any stretch of imagination that the deceased had not made such a statement. In fact, the statement of PW-1 as to the cause of death due to burns caused by the appellant by pouring kerosene oil on her also finds corroboration in the statements of PW-3 and PW-4. Accordingly, this submission of the appellant being without any merit, fails.

22. It is the case of the appellant that the evidence of prosecution witnesses namely, PWs 1 to 4 is not reliable as all the aforesaid witnesses were very closely related to the deceased and were inimical to the appellant. We find no merit in this submission of the appellant. PWs 1, 2, 3 and 4 being the brother, the father and the two sisters respectively of the deceased are closely related to the deceased and this fact is not and cannot be disputed. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court, while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

23. From a perusal of the record, we find that the evidence of PWs 1 to 4 is clear and categorical in reference to the frequent quarrels between the deceased and the appellant. They have clearly and consistently supported the prosecution version with regard to the beating and the ill-treatment meted out to the deceased by the appellant on several occasions which compelled the deceased to leave the appellant's house and take shelter in her parental house with an intention to live there permanently. PWs 1 to 4 have unequivocally stated that the deceased feared threat to her life from the appellant. The aforesaid version narrated by the prosecution witnesses, viz. PWs 1 to 4 also finds corroboration from the facts stated in the complaint.

24. So far the contention of the appellant with regard to delay in registering the FIR and in sending the same to the Magistrate is concerned, we are not inclined to accept the same as it is without any substance. PW-13, in his deposition before the trial Court, clearly stated that immediately on receipt of information about the incident, PW-13 intimated his senior officer PW-14 at the police station about the same. He further stated that after registering the FIR at 11.10 a.m., he forwarded the FIR to the Magistrate forthwith. The crystal clear statements furnished by PW-13 do not leave any doubt in our minds that there was any delay either in registering the FIR or in forwarding the same to the Magistrate.

25. It is the stand of the appellant that it was a case of suicide or accidental death, and not a case of

murder as alleged by the prosecution. On a careful perusal of the record before us, we find the contention of the appellant to be devoid of merit. From the evidence on record, we find that even though the appellant had stated that the deceased had a tendency to commit suicide and had attempted to do so on earlier occasions, it does not find support in the evidence on record before us. In fact, the defence statement reveals that no such statement was made in the past prior to the happening of this incident. It is also pertinent to note here that none of the prosecution witnesses in their testimonies stated about the possibility of the deceased committing suicide. It is also significant to refer to the opinion of Dr. R. Balaram, Junior Specialist of Forensic Medicines (PW-12), who in his deposition stated that if a person pours kerosene on himself or herself over his or her head, it would spread over the back also. The presence of kerosene on the body of the deceased is established from the deposition of PW-12 who, in the post mortem report of the deceased, recorded an observation that the scalp hair of the deceased smelt of kerosene. Thus, we are of the considered opinion that if it were a case of suicide by the deceased by pouring kerosene over her head, the kerosene oil would have certainly run down on the chest as well as on the back side of the body and the fire would have spread all over the body causing burn injuries both on the front as well as on the back side of the body. But that is not the case here. The post-mortem report revealed that there were no burn injuries on the back side of the chest, abdomen and right foot of the deceased. The body of the deceased was

found to be in a lying position with a fresh injury mark on the left side of her forehead. A possible inference which can be drawn is that after hitting the deceased on her forehead, the appellant made her lie down on the floor inside the bathroom and thereafter poured kerosene oil on the body of the deceased, which on account of lying position of the body could be poured only on the front part of her body. As such, when the deceased was burnt, there were no burn injuries found on the back side of the body of the deceased.

26. It is trite law that in a case where there is no direct eye-witness version available and the case is based on circumstantial evidence, the principle which is to be applied by the Court is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This Court has observed as follows in the case of Trimukh Maroti Kirkan v. State of Maharashtra,(2006) 10 SCC 681, at page 693:

"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. This view has been taken in a catena of decisions of this Court. [See State of T.N. v. Rajendran (SCC para 6); State of U.P. v. Dr.Ravindra Prakash Mittal (SCC para 39 : AIR para 40); State of Maharashtra v. Suresh (SCC para 27); Ganesh Lal v. State of Rajasthan (SCC para 15) and Gulab Chand v. State of M.P. (SCC para 4).]

22. Where an accused is alleged to have committed the murder of his wife and the prosecution

succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling house where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of H.P. it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. State of Maharashtra the appellant was prosecuted for the murder of his wife which took place inside his house.

It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. v. Dr. Ravindra Prakash Mittal the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at house at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In State of T.N. v. Rajendran the

wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime." (emphasis underlined)

27. The conduct of the appellant, in scaling up the bathroom wall, instead of opening the bolt and coming out, and leaving for the hospital for his own treatment without telling anyone as to what had actually happened, is an unnatural and unreasonable conduct. The stand of the appellant that he attempted to save the deceased from burning is untenable in view of the fact that after coming out from the bathroom by scaling the wall, the appellant immediately proceeded to the hospital without even making an endeavour to rescue the deceased or render help to the people who had gathered there at his house to facilitate her rescue. At the hospital, the appellant informed the doctor that he had suffered the injuries while lighting the stove, instead of telling that he had suffered those injuries while trying to save his wife from burning. If that were true, the appellant would not have hesitated in informing the doctor about the same. Hearing the screams of the deceased, PW 1 arrived at the scene of occurrence and at that time, he saw the appellant scaling the wall for coming out from the bathroom. The appellant knew that the deceased was burning inside the bathroom. Instead of opening the door of the bathroom so as to bring the deceased out from there, the appellant

chose to scale the bathroom wall despite having sustained burn injuries. The portion of the written statement furnished by the appellant wherein he categorically states that he was in an unconscious condition after climbing over the bathroom wall and, therefore, he was unable to inform the witnesses who had gathered at his house about the incident stands in direct conflict with his statement under Section 313 CrPC as well as with the medico-legal examination report of the appellant (Ex P.14), which speak to the effect that the appellant was conscious and oriented. This position is fortified by the appellant who had himself admitted that he had jumped over the bathroom wall to come out. If he was aware of that situation and when he could request PW1 for arranging an autorickshaw, it is quite clear that he was totally conscious and oriented at the time when the appellant came out from the bathroom. The presence of 18 burnt match sticks in the middle of the bathroom and failure of the appellant to afford a reasonable explanation in this regard only fortify our conviction that these matchsticks were used for the purpose of burning the deceased. After considering the oral and material evidence cumulatively, including the written statement of the appellant, we find that the suicide theory is unsustainable. In the same manner, the accident theory put forward by the appellant that she might have prepared hot water for her daughter after bolting the bathroom door from inside

and might have fallen down also lacks merit.

28. Thus, we are of the considered view that, in the absence of any proper explanation having been furnished by the appellant and from the facts and circumstances of the case, it is clear that it is the appellant who had hit the deceased, made her to lie down, poured kerosene on various parts of her body and lighted with 18 matchsticks, each part of the body and when the flames started coming, he was also caught in the fire and suffered the burn injuries.

29. Accordingly, the present appeal is hereby dismissed. As the appellant is on bail, his bail bonds stand cancelled. The appellant is directed to surrender himself before the jail authorities within 15 days from today failing which the concerned authority shall proceed against the appellant

in accordance with law.