SUPREME COURT OF INDIA

Rohtash Kumar

Vs.

State of Haryana

Crl.A.No.896 of 2011

(Dr. B.S.Chauhan and Dipak Misra JJ.)

29.05.2013

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been filed against the judgment and order dated 5.2.2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 862-DB of 2006, by which it has affirmed the judgment and order of the Sessions Court, by way of which and whereunder the appellant has been convicted for the offences punishable under Sections 302 and 404 of the Indian Penal Code, 1860 (hereinafter referred to as `the IPC'), and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, and in default of payment of fine, to undergo further rigorous imprisonment for one year under Section 302 IPC; and was also sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/-, and in default of payment of fine, to undergo further rigorous imprisonment for three months under Section 404 IPC. However, both the substantive sentences have been ordered to run concurrently.

2. Facts and circumstances as per the prosecution in brief, are as under:

> A. Appellant got married to Sonia (since deceased), aged 30 years, in March 2003. It was an inter-caste marriage, and thus, was not approved of by Sonia's family members. They had both studied Pharmacy together. After passing the Pharmacy Course, Sonia (deceased) was appointed as a Lecturer in the B.S.A. Pharmacy College, Faridabad, and she was also working as a Warden in the Girls' hostel of the said Pharmacy College, situated in Kothi No. 783, Sector 21-A, Faridabad. The married life of the couple was not

happy and they thus filed a Divorce Petition on the basis of mutual consent under Section 13-B of the Hindu Marriage Act, 1955 before the Family Court, Rohtak. The first motion was complete and the second motion had been fixed for 3.9.2004.

B. On 2.9.2004, Sonia (deceased) sent a telephonic message to her mother, Smt. Dhanpati Devi (PW.3), stating that in the previous evening, the appellant Rohtash had come to meet her in the hostel at 8.00 P.M. and had told her that he would appear in the Family Court at Rohtak on 3.9.2004, to make his statement for getting the divorce.

C. In view of the above, on 2.9.2004 at about 5.00 P.M., Sube Singh (PW.1), father of Sonia (deceased), came alongwith his nephew Wazir Singh to meet Sonia in her hostel at Faridabad. However, when they reached there, Ghanshyam (Security Guard), Arjun (Cook) and Bimla (Caretaker) of the hostel came and met them. Bimla (PW.8) (Caretaker) told them that on the same day at about 1.00 P.M., the appellant had come to the hostel to meet Sonia. Both of them had engaged in conversation for about one hour, while sitting in the verandah of the hostel and also had tea together. After the appellant had left the hostel, Bimla (PW.8) had gone to bathroom to wash clothes. Later on, when she had gone in search of Sonia (deceased), she had found her lying dead among the plants, in the gallery of the hostel. She had died of strangulation.

D. Sube Singh (PW.1), had gone to the police station and lodged a complaint giving all the details, also stating that the appellant might have committed the said offence, as she had scratch marks on her neck, as well as on her breasts.

E. In view of the complaint made by Sube Singh (PW.1), an FIR was registered (Ex.P-12). Necessary investigation was conducted, statements of witnesses were recorded, and the postmortem examination on the dead body of Sonia (deceased) was also performed. The appellant was arrested only on 8.9.2004. The articles collected from the place of occurrence and samples taken from the appellant, particularly, specimens of his hair etc., were sent to the Forensic Science Laboratory, Madhuban, for the preparation of an FSL report. After completion of the investigation, a chargesheet was filed against the appellant in court.

F. After committal proceedings, charges were framed against the appellant under Sections 302 and 404 IPC. The prosecution examined 21 witnesses in support of its case, including the parents and relatives of the deceased, as well as Dr. Virender Yadav (PW.4), Ms. Anita Dahiya, the then Chief Judicial Magistrate, Faridabad (PW.17), Dr. O.P. Sethi, (PW.21), and SI Vinod Kumar (PW.20), the investigating officer. Some of the cited witnesses were given up, and a large number of documents etc., were filed.

G. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973, (hereinafter referred to as `the Cr.P.C.'), and all the incriminating material/circumstances were put to him one by one. He denied each allegation levelled against him by repeatedly stating, "It is incorrect." The appellant did not himself, adduce any evidence in defence.

The learned Sessions Court, after appreciating all the evidence and the submissions made by the public prosecutor and the defence counsel, convicted and sentenced the appellant as has been referred to hereinabove.

H. Aggrieved, the appellant preferred an Appeal before the High Court, which has been dismissed vide impugned judgment and order dated 5.2.2009.

Hence, this appeal.

3. Dr. Sushil Balwada, learned counsel appearing on behalf of the appellant has submitted, that there was no eye-witness to the occurrence and that the prosecution had failed to prove and meet the parameters laid down by this Court for conviction in a case of circumstantial evidence. Even if there had been some discord in their marriage, they had agreed to separate mutually and the second motion of the Divorce Petition filed by mutual consent, had been fixed for next day i.e. 3.9.2004. Thus, there had been no occasion for the appellant to commit the offence. The material witnesses to the incident, particularly Ghanshyam and Arjun, who had been working as the Guard and Cook respectively in the Girls' hostel, and Mahender (Attendant) of the Taneja Guest House, where the appellant is alleged to have stayed under a fake name, have not been examined. The prosecution was under an obligation to examine each of them. The evidence of Jagatpal (PW.2), a hostile witness, could not have been considered at all. In light of the facts of this case, the theory of "last seen" together cannot be applied. Furthermore, the prosecution has created an entirely improbable story to the effect that after killing Sonia, the appellant had taken away her mobile phone, and had in the evening on

the same day, telephoned his mother-in-law Dhanpati (PW.3), as well as several other relatives of Sonia, making an extra- judicial confession stating that he had killed Sonia, and that he would now himself commit suicide. The recovery of mobile phone from Itarsi (M.P.) cannot be relied upon, as this place is far away from Faridabad. There are material inconsistencies in the statements of the witnesses. The chain of circumstances is not complete. The prosecution must prove its case beyond reasonable doubt, and cannot take advantage of the weaknesses in the case of the defence. Thus, the appeal deserves to be allowed.

4. Per contra, Shri Ramesh Kumar, learned counsel appearing on behalf of the State, has opposed the appeal contending that the appellant had last been seen with Sonia (deceased), by several persons including Bimla (PW.8), in the hostel. The appellant had thereafter left the hostel alone, just before Sonia had been found dead. The appellant, after committing the offence, had run away and stayed at the Taneja Guest House, Faridabad, under a fictitious name and by providing a fake address. He had also made an attempt to commit suicide in the said Guest House, and on being asked about the same by the attendant, he had run away from there. The appellant had left his diary and wrist watch, as well as a letter in the name of the Superintendent of Police, the Deputy Commissioner of Faridabad, the Chief Justice of the Punjab & Haryana High Court, and the Chairman of the Human Rights Commission, complaining about the family members of Sonia. The diary had also contained a suicide note. The conduct of the appellant clearly indicates that he has committed the offence. The concurrent findings of fact recorded by the courts below do not warrant any interference and therefore, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties, and perused the record.

> Before we enter into the merits of the case and its factual matrix, it is desirable to deal with the legal issues involved herein.
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> Case of Circumstantial evidence:

6. The present case is of circumstantial evidence, as there exists no eye-witness to the occurrence. The primary issue herein involves determination of the requirements for deciding a case of circumstantial evidence.

7. This Court, in R. Shaji v. State of Kerala, AIR 2013 SC 651 has held, "the prosecution must establish its case beyond reasonable doubt, and cannot derive any

strength from the weaknesses in the defence put up by the accused. However, a false defence may be brought to notice, only to lend assurance to the Court as regards the various links in the chain of circumstantial evidence, which are in themselves complete. The circumstances on the basis of which the conclusion of guilt is to be drawn, must be fully established. The same must be of a conclusive nature, and must exclude all possible hypothesis, except the one to be proved. Facts so established must be consistent with the hypothesis of the guilt of the accused, and the chain of evidence must be complete, so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and must further show, that in all probability, the said offence must have been committed by the accused."

(See also: Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622; and Paramjeet Singh @ Pamma v. State of Uttarakhand, AIR 2011 SC 200).

Thus, the Court while convicting a person on the basis of the circumstantial evidence, must apply the aforesaid principles.

Whether prosecution must examine all the witnesses:

8. A common issue that may arise in such cases where some of the witnesses have not been examined, though the same may be material witnesses is, whether the prosecution is bound to examine all the listed/cited witnesses.

This Court, in Abdul Gani & Ors. v. State of Madhya Pradesh, AIR 1954 SC 31, has examined the aforesaid issue and held, that as a general rule, all witnesses must be called upon to testify in the course of the hearing of the prosecution, but that there is no obligation compelling the public prosecutor to call upon all the witnesses available who can depose regarding the facts that the prosecution desires to prove. Ultimately, it is a matter left to the discretion of the public prosecutor, and though a court ought to and no doubt would, take into consideration the absence of witnesses whose testimony would reasonably be expected, it must adjudge the evidence as a whole and arrive at its conclusion accordingly, taking into consideration the persuasiveness of the testimony given in the light of such criticism, as may be levelled at the absence of possible material witnesses.

9. In Sardul Singh v. State of Bombay, AIR 1957 SC 747, a similar view has been reiterated, observing that a court cannot, normally compel the prosecution to

examine a witness which the prosecution does not choose to examine, and that the duty of a fair prosecutor extends only to the extent of examination of such witnesses, who are necessary for the purpose of disclosing the story of the prosecution with all its essentials.

10. In Masalti v. State of U.P., AIR 1965 SC 202, this Court held that it would be unsound to lay down as a general rule, that every witness must be examined, even though, the evidence provided by such witness may not be very material, or even if it is a known fact that the said witness has either been won over or terrorised. "In such cases, it is always open to the defence to examine such witnesses as their own witnesses, and the court itself may also call upon such a witness in the interests of justice under Section 540 Cr.P.C.". (See also: Bir Singh & Ors. v. State of U.P., (1977) 4 SCC 420)

11. In Darya Singh & Ors. v. State of Punjab, AIR 1965 SC 328, this Court reiterated a similar view and held that if the eye-witness(s) is deliberately kept back, the Court may draw inference against the prosecution and may, in a proper case, regard the failure of the prosecutor to examine the said witnesses as constituting a serious infirmity in the proof of the prosecution case.

12. In Raghubir Singh v. State of U.P., AIR 1971 SC 2156, this Court held as under:

> "…Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. The appellant's counsel has not shown how the prosecution story is rendered less trustworthy as a result of the non-production of the witnesses mentioned by him. No material and important witness was deliberately kept back by the prosecution. Incidentally we may point out that the accused too have not considered it proper to produce those persons as witnesses for controverting the prosecution version….."
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> (Emphasis added)

13. In Harpal Singh v. Devinder Singh & Anr., AIR 1997 SC 2914, this Court reiterated a similar view and further observed: "….The illustration (g) in Section 114 of the Evidence Act is only a permissible inference and not a necessary inference. Unless there are other circumstances also to facilitate the drawing of an adverse inference, it should not be a mechanical process to draw the adverse

inference merely on the strength of non-examination of a witness even if it is a material witness…..”

14. In Mohanlal Shamji Soni v. Union of India & Anr., AIR 1991 SC 1346, this Court held:

> “10. It is cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides. Nonetheless if either of the parties withholds any evidence which could be produced and which, if produced, be unfavourable to the party withholding such evidence, the Court can draw a presumption under illustration (g) to Section 114 of the Evidence Act…. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.”

15. In Banti @ Guddu v. State of M.P., AIR 2004 SC 261, this Court held:

> “In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code of Criminal Procedure, 1973 enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. ……If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.
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> When the case reaches the stage envisages in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear form the said section that the Public

> Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the presence cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. ……This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice. ……It is open to the defence to cite him and examine him as a defence witness……..”

16. The said issue was also considered by this Court in R. Shaji (supra), and the Court, after placing reliance upon its judgments in Vadivelu Thevar v. State of Madras; AIR 1957 SC 614; and Kishan Chand v. State of Haryana, JT 2013(1) SC 222), held as under: . “22. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence which is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined in order to prove/disprove a fact. It is a time-honoured principle, that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise. The legal system has laid emphasis on the value provided by each witness, as opposed to the multiplicity or plurality of witnesses. It is thus, the quality and not quantity, which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced over and above this, does not carry any weight.”

17. Thus, the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution and “the court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive.” In an extra- ordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to

"pick and choose" his witnesses, as he must be fair to the court, and therefore, to the truth. In a given case, the Court can always examine a witness as a court witness, if it is so warranted in the interests of justice. In fact, the evidence of the witnesses, must be tested on the touchstone of reliability, credibility and trustworthiness. If the court finds the same to be untruthful, there is no legal bar for it to discard the same.

Discrepancies in the depositions:

18. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence in its entirety. Therefore, unless irrelevant details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole. (See: State of U.P. v. M.K. Anthony, AIR 1985 SC 48; State rep. byInspector of Police v. Saravanan & Anr., AIR 2009 SC 152; and Vijay @ Chinee v. State of M.P., (2010) 8 SCC 191).

Evidence of a hostile witness:

19. It is a settled legal proposition that evidence of a prosecution witness cannot be rejected in toto, merely because the prosecution chose to treat him as hostile and cross examined him. The evidence of such witnesses cannot be treated as effaced, or washed off the record altogether. The same can be accepted to the extent that their version is found to be dependable, upon a careful scrutiny thereof.

20. In State of U.P. v. Ramesh Prasad Misra & Anr., AIR 1996 SC 2766, this Court held, that evidence of a hostile witness would not be rejected in entirety, if the same has been given in favour of either the prosecution, or the accused, but is required to be subjected to careful scrutiny, and thereafter, that portion of the evidence which is consistent with the either case of the prosecution, or that of the defence, may be relied upon. (See also: C. Muniappan & Ors. v. State of Tamil Nadu, AIR 2010 SC 3718; Himanshu @ Chintu v. State (NCT of Delhi), (2011) 2 SCC 36; and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979).

Therefore, the law permits the court to take into consideration the deposition of a hostile witness, to the extent that the same is in consonance with the case of the prosecution, and is found to be reliable in careful judicial scrutiny.

Motive:

21. The evidence regarding the existence of a motive which operates in the mind of the accused is very often very limited, and may not be within the reach of others. The motive driving the accused to commit an offence may be known only to him and to no other. In a case of circumstantial evidence, motive may be a very relevant factor. However, it is the perpetrator of the crime alone who is aware of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggests adequately, the existence of the necessary motive required to commit a crime, it may be conceived that the accused has in fact, committed the same. (Vide: Subedar Tewari v. State of U.P. & Ors., AIR 1989 SC 733;Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420; and Dr. Sunil Clifford Daniel v. State of Punjab, (2012) 11 SCC 205).

Explanation of the accused:

22. It is obligatory on the part of the accused while being examined under Section 313 Cr.P.C., to furnish some explanation with respect to the incriminating circumstances associated with him, and the court must take note of such explanation even in a case of circumstantial evidence, to decide whether or not, the chain of circumstances is complete. [Vide: Musheer Khan @ Badshah Khan & Anr. v. State of Madhya Pradesh, AIR 2010 SC 762; and Dr. Sunil Clifford Daniel (supra)].

23. This Court, in State of Maharashtra v. Suresh, (2000) 1 SCC 471, held as under:

> "When the attention of the accused is drawn to such circumstances that inculpate him in relation to the commission of the crime, and he fails to offer an appropriate explanation or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances."
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> Undoubtedly, the prosecution has to prove its case beyond reasonable doubt. However, in certain circumstances, the accused has to furnish some explanation to the incriminating circumstances, which has come in evidence, put to him. A false explanation may be counted as providing a missing link for completing a chain of circumstances.
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> Last seen together theory:

24. In cases where the accused was last seen with the deceased victim (last seen-together theory) just before the incident, it becomes the duty of the accused to explain the circumstances under which the death of the victim occurred. (Vide: Nika Ram v. State of Himachal Pradesh, AIR 1972 SC 2077; and Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106).

25. In Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681, this Court held as under:

> "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 home 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."
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> (See also: Prithipal Singh & Ors. v. State of Punjab & Anr., (2012) 1 SCC 10)
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> Thus, the doctrine of "last seen together" shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on

the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him.

Police official as a witness:

26. The term witness, means a person who is capable of providing information by way of deposing as regards relevant facts, via an oral statement, or a statement in writing, made or given in Court, or otherwise.

In Pradeep Narayan Madgaonkar & Ors.v. State of Maharashtra, AIR 1995 SC 1930, this Court examined the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Court herein held, that the same must be subject to strict scrutiny. However, the evidence of police officials cannot be discarded merely on the ground that they belonged to the police force, and are either interested in the investigating or the prosecuting agency. However, as far as possible the corroboration of their evidence on material particulars, should be sought.

(See also: Paras Ram v. State of Haryana, AIR 1993 SC 1212; Balbir Singh v. State, (1996) 11 SCC 139; Kalpnath Rai v. State (Through CBI), AIR 1998 SC 201; M. Prabhulal v. Assistant Director, Directorate of Revenue Intelligence, AIR 2003 SC 4311; and Ravinderan v. Superintendent of Customs, AIR 2007 SC 2040).

Thus, a witness is normally considered to be independent, unless he springs from sources which are likely to be tainted and this usually means that the said witness has cause, to bear such enmity against the accused, so as to implicate him falsely. In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness, or that his deposition cannot be relied upon.

27. The instant case requires to be considered in light of the aforesaid settled legal propositions.

Sube Singh (PW.1), father of Sonia, deceased, had sufficient reason to go to go to Faridabad to meet his daughter, in view of the fact that the second motion of divorce between the appellant and the deceased was fixed for next day, and Sonia, deceased had telephoned her mother regarding the arrival of the appellant one day before, stating that she had doubts about the promise

made by the appellant to the extent that he would make a statement before the Family Court at Rohtak, to facilitate their divorce by mutual consent. It is but natural for any parent, even if they dis-approve of the inter-caste marriage of their children, to want to be with them at the time of such proceedings, that would affect the life of their child. Sube Singh (PW.1) has further deposed, that the police had recovered clothes, rope, handkerchief, hairpin and blood stained earth etc. from the place of occurrence, and had kept these articles in separate parcels.

28. Dhanpati (PW.3), mother of the deceased, has corroborated the deposition of Sube Singh (PW.1), and has further deposed, that she had received a phone call from the accused which had been made from the mobile phone number that had belonged to Sonia deceased. On being asked, about the same by her, he had told her that he had murdered Sonia in her hostel by strangulating her, and that thereafter, he had run away from the place of occurrence. He had also stated that he would commit suicide.

29. Bimla (PW.8), the caretaker of the hostel, has deposed that while she was working as a caretaker in the Girls' hostel, on 1.9.2004 at about 8-9 p.m., Sonia (deceased) had come to the hostel and immediately had gone to make a phone call. After about 10 minutes, her husband, i.e., the appellant accused had reached there. They had engaged in some conversation. The next day, Sonia had come back from college at about 1.00 p.m., and shortly after, the appellant had also arrived there. Ghanshyam, the watchman had been told by the appellant that he was husband of the warden and wanted to meet her. Ghanshyam had not initially permitted him to enter the hostel, but had allowed his entry after taking permission from Sonia. The appellant and Sonia had then sat together in the verandah of the hostel, and had spoken for about 30-40 minutes. Both of them had then left the hostel, and had returned only after about one hour. After their arrival, the witness had served them tea. Thereafter, she had gone to bathroom to wash clothes, and when she returned after about 20-25 minutes, she had enquired from Ghanshyam regarding the whereabouts of Sonia and her husband. She had then been told that Sonia was in her room, whereas the appellant had already left the hostel alone. While going Sonia's room, she had found her lying dead in the garden, near the plants in the hostel. Seeing her dead, the witness was frightened.

30. Mukesh Chand (PW.9), has proved the pendency of the case for divorce by mutual consent before the Family Court, Rohtak and the fact that the date of the second motion had been fixed for 3.9.2004.

31. Narender Singh (PW.12), is the brother-in-law of Sonia (deceased). He has deposed that he had received a phone call at about 5.30 p.m. on 2.9.2004, from the mobile phone number belonging to Sonia. The said phone call had been made by the appellant, and he had informed the witness that he had killed Sonia, and had further told him he had also had an illicit relationship with the wife of the witness. The witness has deposed, that on hearing this, he had lost his temper and had used abusive language in relation to the appellant, after which he had disconnected the call.

> Virender Singh (PW.19), a relative of Sonia's, had also received a similar phone call from the appellant from the mobile phone number belonging to of Sonia.

32. Ms. Anita Dahiya (PW.17), the then Chief Judicial Magistrate, Faridabad, has deposed that the investigating officer had wanted to have an identification parade, but that the appellant had not agreed to the same.

33. Jagatpal (PW.2), an attendant at the Taneja Rest House, NIT, Faridabad, has deposed in his examination-in-chief that a person had stayed in the said guest house, after disclosing his identity as Amit, and by providing his address as 535, Model Town, Simla. He had even made the requisite entries in the register in his own handwriting. As regards the rest of the situation, he has stated that since his duty was then over, his colleague Mahender, had come on duty at 9.00 a.m. on 2.9.2004, and that therefore, he had no further information to offer. At this stage, he was declared hostile as it was found that he was suppressing the truth and thus, he was cross-examined. Undoubtedly, he has turned hostile. However, he has admitted that on 2.9.2004, at about 6.30 p.m., attendant Mahender had come to his place, and had told him that the occupant of room no. 114 was attempting to commit suicide, and this was when he, alongwith Mahender had gone to his room. The appellant had thereafter, run away from the guest house. They had tried to chase him but in vain. From his room, one diary, a letter and wrist watch were recovered, and the said articles were handed over to the police vide memo Ex.P5, which bore his signature.

34. Dr. Virender Yadav (PW.4), had conducted the post-mortem examination on the body of Sonia, and he has deposed that there was bleeding with clotted blood present in the bilateral nostrils, and on the right side of the mouth. Rigor mortis was present in all the four limbs with postmortem staining on dependent parts. Multiple abrasions were present on the front of the neck, with large reddish contusions- bilateral shoulders, more on the right side. Abrasions numbering four

of the size 2.5 x 0.75 cms., were present on the right side, just below the clavicle and four of these in number were present on its left side.

> On dissection, the muscle of the neck was contused with hemorrhage with a fracture of the thyroid cartilage, and a fracture of the tracheal rings with blood clots in the trachea. The adjoining muscles and upper chest muscles were contused extensively with blood clots, with bilateral fractures of the clavicle bone and the upper second and third ribs.
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> In his opinion, the cause of death was asphyxia caused as a result of smothering and throttling, which was ante-mortem in nature and was sufficient to cause death in the natural course. He has further deposed, that she had died within two minutes of the offence, and before 24 hours of the post-mortem.

35. There is evidence on record to show that the mobile phone had been purchased by Sonia from Itarsi on 10.9.2004. The same mobile phone was recovered from the shop of Sonu at Itarsi upon the disclosure statement made by the appellant, vide recovery memo Ex.P-19.

36. In view of the aforesaid depositions, facts emerge as under;-

> (i) The appellant and Sonia (deceased) had been classmates and had developed intimacy. In spite of the fact that they belonged to different castes, they had thereafter gotten married, knowing fully well that their marriage would not be approved by at least one of the two families.
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> (ii) Their marriage was not cordial and within an year of such marriage, they had mutually decided to separate and had thus, filed a petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955, before the Family Court, Rohtak. The first motion was clear, and the case was fixed for second motion on 3.9.2004. Just before the said date, the appellant had met Sonia (deceased), and had assured her that he would agree to the said divorce in the second motion on 3.9.2004, before the Family Court at Rohtak.
>
> (iii) The said information was furnished by Sonia (deceased), to her mother Smt. Dhanpati Devi (PW.3), and it was in view thereof that Sube Singh (PW.1), father of the deceased had come to Faridabad only to meet Sonia.

(iv) While reaching there, Sube Singh (PW.1) had been informed by Ghanshyam (Security Guard), Arjun (Cook) and Bimla, Caretaker (PW.8), that the appellant had come to meet Sonia, and that now she was lying dead in the garden. Bimla (PW.8) had also furnished him with all the requisite details, as regards the visit of the appellant. Sube Singh, father of the deceased, had lodged an FIR. Hence, criminal law was set into motion and the investigation began.

(v) The Police had recovered the dead body, as well as various material objects lying near it, including a rope.

(vi) The post-mortem report suggests that Sonia had died of asphyxia caused as a result of smothering and throttling, and that it had taken hardly any time to kill her.

(vii) The appellant had stayed at the Taneja Guest House, by providing a fictitious name and address, and the next day had tried to commit suicide. He had been chased by the hostel staff, but had managed to run away. While running away, he had left a diary (Ex.P-54), a wrist watch (Ex.P-56), and a letter (Ext.P-55).

(viii) On 2.9.2004, the appellant had made certain telephone calls from the mobile phone belonging to Sonia, to the mother as well as to several other relatives of the deceased, informing them about the murder of Sonia that had been committed by him, and had further stated that he would commit suicide.

(ix) A diary (Ex. P-54), a letter (Ex.P-55) and a wrist watch (Ex.P- 56), belonging to the appellant were recovered from the Taneja Guest House. A suicide note had been written in the said diary by the appellant, and a letter had also been written by him to the Superintendent of Police, Faridabad, the District Collector, the Chief Justice, High Court of Punjab & Haryana, and the Human Rights Commissioner, suggesting his involvement. The recovery memo of the same (Ex.P-5), bears the signatures of Jagatpal (PW.2) and Mahender Singh, employees of the Taneja Guest House, Faridabad.

(x) The appellant had remained absconding for several days, and after his apprehension, the mobile phone belonging to Sonia was recovered from the shop of Sonu at Itarsi, Madhya Pradesh on the basis of a disclosure statement made by him. The disclosure statement made by the appellant on

the basis of which the recovery was made, bears the signatures of the appellant and of a police personnel as a witness.

(xi) The call records clearly prove that the mobile phone belonging to Sonia (deceased), had been used even after her death and that the same had been in the possession of the appellant, as no body else could have used the same. Sonia had died before 2.30 p.m. on 2.9.2004. The call records of her telephone, which have been exhibited before the court, clearly disclose the outgoing calls that were made from her telephone to her mother and other relatives, as has been referred to hereinabove at 1620.55; 1625.47; 1637.17; 1707.46; and 1744.03 as Exh.P.21.

(xii) During the investigation, the appellant had refused to participate in the Test Identification Parade, as he could have been identified by Ghanshyam (Security Guard) of the hostel, Arjun (Cook) and Bimla, Caretaker (PW.8), as well as by the staff of the Taneja Guest House.

(xiii) Jagatpal (PW.2), though had turned hostile, has provided material information, and has also accepted his signatures on the recovery memo and his statements, as well as those of Mahender, the other attendant.

(xiv) The appellant has given a specimen of his hair to be compared with the hair recovered from the place of occurrence, and the FSL report (Ex.P-8) that was tendered as evidence has showed, that the hair that was recovered from the place of occurrence, was found to be similar in most of its morphological and microscopical characteristics, to the sample of the hair provided by the appellant.

37. In view of the aforesaid factors, the Trial Court, as well as the High Court, have convicted the appellant and awarded the sentences as referred to hereinabove.

We have also been taken through the evidence on record, as well as through the judgments of the courts below. Bimla, Caretaker (PW.8), is definitely an independent witness. She had "last seen together" the appellant and Sonia (deceased), just before her death, and we do not see any reason to doubt the veracity of her statement. It is also on record that the appellant had left alone from the hostel. The appellant has not furnished any explanation with respect to what could have happened to Sonia (deceased) while she was with him, if he was not responsible for her death. No explanation was furnished by him as regards why he had stayed at the Taneja Guest House, by

providing a fictitious name and false address and nor was any explanation provided by him with respect to the circumstances under which, the mobile phone belonging to Sonia, had come to be in his possession. Admittedly, this is a case of a love marriage which had gone wrong. Owing to such marital discord, they had decided to separate and to get divorce by mutual consent. Therefore, it might have been frustration which had forced the appellant to commit such a heinous crime.

38. From the undelivered letter that had been written by the appellant in the name of Superintendent of Police and to others, in Ex.P-54 recovered from the Taneja Guest House, it is evident that the appellant had developed intimacy with Sonia (deceased) much earlier, and had claimed to have married her in a temple, though, the formal marriage between them had taken place in the year 2003. The said letter reveals, that Sonia (deceased) and her family members had tortured him mentally, and had extracted a huge amount of money from him over a period of the past ten years. He had even persuaded his friends, relatives and family members to give a loan to the complainant, Sube Singh, which had never been returned by him. Several threats had been made to the appellant by the family of the deceased stating that they would involve him in a false dowry demand case, eliminate him. The family members of the appellant had severed all relations with him.

In the suicide note (Ex.P-55), the same story has been depicted. Thus, the feelings of the appellant towards Sonia (deceased), and her family members were such, that they could have given rise to a motive for him to commit the said offence.

39. The non-examination of Sonu, from whose shop, the mobile phone was recovered, cannot be said to be fatal for the reason that the recovery memo bears the signature of the appellant himself. One police Head Constable has also signed the same as a witness, and it is not the case of the appellant that he had been forced to sign the said recovery memo. Similarly, we do not find any force in the submissions advanced on behalf of the appellant, stating that the non-examination of Ghanshyam and Arjun from the girls' hostel, or of Mahender from the Taneja Guest House, requires the court to draw adverse inference, as there is no need to provide the same evidence in multiplicity. The appellant could have examined them or some of them as defence witnesse(s). However, no such attempt was made on his part.

40. A large number of discrepancies have been pointed out by the learned counsel appearing on behalf of the appellant, and some of them are reproduced as under:

A. The entry register maintained in the Girls Hostel for visitors was never produced in court.

B. The finger prints taken from the glass and tea cups recovered from the hostel, to prove that the same had been used by the appellant, did not test positive.

C. The rope allegedly used in the crime, was not recovered, nor has any positive evidence been produced to show that the appellant had gone to the hostel armed with a rock.

D. A large number of girl students had been staying in the hostel, and none of them were examined.

E. The postmortem report does not in any way prove the case of the prosecution, for the reason that the throttling, smothering and breaking of various ribs of the deceased, may not have been caused by a single person.

F. The mobile phone recovered from Itarsi (M.P.) was not deposited in the Malkhana.

G. The telephone number that had allegedly been purchased by Sonia (deceased), and later recovered, showed some variance. H. The journey from Faridabad to Itarsi and from Itarsi to Faridabad has not been proved.

I. The Booking Register of the Taneja Guest House does not prove that the appellant had stayed in the said Guest House.

41. We have examined the aforesaid discrepancies pointed out by the learned counsel. It may be stated herein that some of the issues have been explained by the prosecution, however, no attempt was ever made by the defence to put most of these issues to SI Vinod Kumar (PW.20), the Investigating Officer in his cross-examination. It is evident from his deposition that he had, in fact, answered all the questions that were put to him in the cross-examination. However, it is pertinent to clarify that most of these questions that are being currently raised before us were not put to him. For example, he has explained that nobody from the said market had been ready to become the Panch witness for recovery of the mobile phone from Sonu's shop at Itarsi, and that even Sonu was not ready to do so. Further, no question had been put to him in the cross-examination regarding the different

EMEI number of the said mobile phone. The mobile phone that was recovered, bore the EMEI No. 3534000004033852 (Ex.P-19), though the EMEI number of mobile phone that belonged to Sonia was 3534000004033853. Furthermore, no question had been put as to why the mobile phone, after the recovery, had not been deposited in the Malkhana. In light of such a fact situation, it is not permissible for us to consider such discrepancies.

So far as the inconsistencies in the depositions of the witnesses are concerned, none of them can be held to be material inconsistency.

42. The facts so established by the prosecution do not warrant further review of the judgments of the courts below by this court. The appeal lacks merit and is, accordingly, dismissed.