2025:AHC-LKO:83333-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No. - 357 of 1982

Anwar .....Appelalnt(s)

Versus

State of U.P. .....Respondents(s)

Counsel for Appellant(s)	:	J.N. Chaudhary, Amit Chaudhary, Siddharth Sinha, Amicus Curiae
Counsel for Respondent(s)	:	Government Advocate

A.F.R.

Court No. - 10

Reserved on : 15.10.2025
Delivered on : 12.12.2025

HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.

(*Per Zafeer Ahmad, J.*)

1. Heard Sri Amit Chaudhary, learned counsel for the appellant and Sri Arunendra, learned A.G.A for the State and perused the record.

2. By means of the present criminal appeal filed under Section 374(2) Criminal Procedure Code (in short Cr.P.C.), the appellant, Anwar, challenges the order and judgment dated 15.03.1982 passed by the Court of Sessions Judge, Unnao in Sessions Trial No. 202 of 1981 (State *v.* Anwar & Another) Police Station Kotwali, District- Unnao arising out of

case crime no. 191 of 1977 whereby the appellant has been convicted under Section 302 of Indian Penal Code (in short I.P.C) readwith Section 34 I.P.C and sentenced to imprisonment for live and co-accused Shakir @ Bankey was acquitted by the same judgment.

Prosecution Story in Nutshell:

3. The prosecution story, in brief, is that the complainant Mehboob, Chowkidar, was informed by Hardev Ram, Constable outpost of Magarwara, that in the house of Nabbu Chikwa, adjacent to the house of Ahmadi Faqirni, where Haseena (deceased), her husband Anwar and Anwar's friend were staying since yesterday, the dead body of Haseena was lying there, with noose of dhoti tied around her neck. He was directed to lodge the report at the police station.

4. On the bases of this oral report a case under Section 302 IPC was registered (Ext. Ka-1) and GD entry no. 24 was made (Ext. Ka-2). The investigation commenced thereafter. The Investigating Officer prepared the inquest report (Ext. Ka-4), sketch of the dead body (Ext. Ka-5), challan of dead body (Ext. Ka-6) and letter to C.M.O. (Ext. Ka-7) duly sealed dead body and sent for post mortem, and prepared a site plan (Ext. Ka-13). Furthermore, he took the custody of dhoti used for strangulation (Ext. Ka-8), a piece of *Tat* and *Kathri* lying under and near the head of the dead body containing some vomited material and blood (Ext. Ka-9), samples of blood stained and plain earth (Ext. Ka-10), broken lock of the house (Ext. Ka-11) and the house-hold good found therein were also taken into the custody and entrusted to the *Superdigi* of Ramjan Ali (Ext. Ka-12). Furthermore, I.O. made an additional enquiry from the post-mortem

doctor, whether the death occurred on date of incident and whether the abdomen was completely empty as result of vomiting by the deceased (Ext. Ka-14). During further investigation, the co-accused Shakir alias Bankey was arrested, suspecting him to be friend and associate of Anwar in the crime.

5. Upon completion of investigation, a charge-sheet under Section 302/34 IPC was submitted against both the accused persons (Ext. Ka-15) and the case was committed to the Session Court, where charge under Section 302/34 IPC was framed. Further, both accused pleaded not guilty and denied participation or complicity in the incident. Accused Anwar denied having gone to live with Hasina (deceased) in the house of Nabbu and co-accused Bankey denied having any concern with Anwar or Hasina, he further stated that he had been taken into custody from his house in village Bachhauli.

6. To prove its case, the prosecution examined nine witnesses, PW-1 Ramjan Ali (father of deceased), PW-2 Smt. Ahamdi (aunt of deceased & neighbor of Nabbu), PW-3 Chhota Singh, PW-4 Smt. Asgari (daughter of Ahamdi), PW-6 Sat Narayn Tiwari, who are witnesses of fact. PW-5 S.I Sohan Lal Shukla, PW7- Dr. V.K. Verma (post-mortem doctor), PW-8 S.I Ram Shankar, and PW-9 B.S. Chauhan (Special Executive Magistrate) who are formal witnesses and proved various steps in the investigation and medical evidence.

7. Appellant did not produce any oral evidence in his defence. In his statements under Section 313 CrPC, the appellant offered no explanation and simply denied by saying "*Galat hai pata nahi*". He further stated that

he has been falsely implicated in the case on the basis of enmity. Thus, the appellant pleaded innocence.

8. Upon a comprehensive appraisal of the oral and documentary evidence on record, the learned Trial Court convicted the accused Anwar under Section 302/34 IPC and sentenced him to life imprisonment, whereas, the co-accused Bankey was acquitted under the charges of Section 302/34 IPC.

Submission made by learned counsel for the accused-appellant :-

9. Learned counsel for the accused-appellant submitted that a false and concocted story has been framed against the appellant due to previous enmity and that the prosecution witness had not seen the incident. It is further argued that there is unexplained delay in lodging the First Information Report, which casts a serious doubt on the prosecution version. It is also contended that the entire case rests on circumstantial evidence and that the prosecution has failed to establish a complete and unbroken chain pointing only towards the guilt of the appellant.

10. Learned counsel further submits that there exist material inconsistencies between the ocular evidences of the witnesses and the medical findings recorded during the post-mortem examination, rendering the prosecution evidence wholly unreliable. Attention has also been invited to the condition of decomposition of the deceased's body, as found by the autopsy surgeon, which according to the appellant is inconsistent with the prosecution's case regarding the time of death.

11. Furthermore, the learned counsel submits that the appellant is entitled to the presumption of innocence, which stands strengthened in the present case due to the acquittal of co-accused Shakir @ Bankey. On that premise,

it is argued that once the prosecution story has been disbelieved with respect to the co-accused, it would not be safe to rely upon the same testimony to convict the present appellant. It is lastly contended that the investigation was neither fair nor impartial and that the prosecution has failed to prove the case beyond reasonable doubt, therefore the appellant deserves to be acquitted.

Submission made by learned A.G.A : -

12. Per contra, learned A.G.A. has vehemently opposed the submissions advanced by the learned counsel for the appellant. He further submitted that the impugned judgment and order have rightly been passed by the learned trial court in accordance with law after considering the evidences and material available on record. Thus, learned A.G.A. submitted that the accused-appellant has rightly been convicted in accordance with law and sentenced accordingly. There is no illegality or error in the impugned judgment and order. It is further submitted that the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

Oral Testimonies:

In order to appreciate the issues arising in the present appeal, it is appropriate to examine, in brief, the oral evidence adduced by the prosecution.

13. **PW-1 Ramzan Ali,** father of the deceased**,** deposed that his daughter, Haseena, married the accused, Anwar, around 8-9 years back through her sister-in-law, Alla Rakkhi, who happened to be one of the relatives of Anwar. He further deposed that approximately one month prior to the incident, Haseena had come to him with complaints regarding Anwar’s cruel behaviour towards her and he advised her to go to Alla Rakhhi, who

had arranged the marriage. However, the matter was subsequently settled, and Anwar took her back to his house after about 8–10 days. He further deposed that upon receiving information about his daughter's death, he went to the village Magarwara, where the inquest proceedings were already underway, and he informed the Inspector present there about all the facts within his knowledge.

14. During cross-examination, he deposed that after the settlement of the dispute between Haseena and her husband, he was unaware of her whereabouts.

15. **PW-2 Smt. Ahmadi,** an eye-witness of the incident, deposed that a day before the date of occurrence, the deceased came to her house seeking shelter as she was reluctant to accompany her husband due to his cruel behaviour towards her. Haseena stayed in her house for that night. She further deposed that the next day, accused Anwar, along with his daughter and his friend Bankey, came to her (Ahmadi's) house to take Haseena back, but she refused. Thereafter, a quarrel ensued between them, upon which two policemen and one Tiwari Ji (Sat Narain Tiwari) intervened and tried to settle the dispute. Haseena did not agree to go to her matrimonial village, Patari, but consented to reside anywhere in Magarwara instead. She further deposed that there was a vacant house belonging to one Nabbu Chikwa situated adjacent to her house, and the keys of the said house were with her. Anwar obtained permission from Nabbu and thereafter all of them went inside that house. She further deposed that on the day of the incident she was residing in her house along with her two daughters, Asgari and Akbari, while her husband was not present. She further

deposed that at about 8:00 p.m. she again heard noise of quarrel between the accused and deceased and thereafter, she along with her daughters, peeped through the boundary wall and saw Haseena lying on the ground while Anwar and his friend were sitting on either side of her shoulders, pressing them down. She further deposed that there was a lantern burning at the spot, although the light was dim, and she also stated that her eyesight was weak. She further deposed that she called out to Anwar asking him to stop, but he warned her not to interfere in their personal matter. She further deposed that later she heard sound of opening and closing of the door, of house of Nabbu. She further deposed that the next day, around 1:00–1:30 p.m., while she and her daughters were returning from cutting grass, they saw the dead body of Haseena and police personnel gathered at the spot. She further deposed that after that night she did not see Haseena alive. She further deposed that she did not previously knew Bankey and saw him for the first time in the day on the date of the occurrence, when the initial quarrel took place between the accused and deceased, and again during the occurrence of the incident (i.e. in the night). She further identified him during the jail identification proceedings, in district jail.

16. During cross-examination, she deposed that Haseena had come on a Monday, seeking shelter. She further deposed that initially, Haseena was unwilling to reside with Anwar and expressed her desire to stay separately, but after assurance of police personnel, she agreed to stay with him in Magarwara. She further deposed that she had also narrated the entire incident (of crime) to Tiwari Ji, who earlier that day along with the police

convinced Haseena to stay with Anwar. She further deposed that she herself did not go to the Police as one Chowkidar, Mehboob informed at around 10:00 P.M. that police constables were not in the Chowki due to another murder elsewhere. She further deposed she narrated all the facts known to her to the said Chowkidar. She further deposed that she had a weak vision and could not see properly although she could make out that persons were present there. She further deposed that about 20–22 days after the incident she was called by Kotwali for identification of the apprehended accused in District Jail, where she and her daughters identified Bankey. She further deposed that it would be wrong to say that she had been pressurized by the police to give such testimony.

17. **PW-3 Chhota Singh,** deposed that he knew both Haseena and Anwar. He further deposed that on the date of occurrence, at about 8:00 p.m., while returning home along with one Kallu Singh and while crossing the galiyara in front of Nabbu's house, he saw the accused Anwar and his friend along with a female child aged about 2½–3 years. The accused was locking the door of the house from outside, while the other person was holding a bicycle and carrying the child. He further deposed that the accompanying person was later identified by him as Bankey in the District Jail. He further deposed that the galiyara was illuminated by the lights coming from the factories of Kashi Jewellers, Chandan Mills, and a nearby tubewell of Sardar Singh, due to which he was able to identify the persons present there.

18. During cross-examination, he deposed that he came to know about the death of Haseena the next morning but did not enter the house at that time

and had reached there around 1:00–1:30 p.m., when the inquest proceedings were being conducted. He further deposed that he knew the deceased prior to the incident and had seen her living alone in the house of Nabbu for about 20–25 days, and that accused had visited her several times. He further deposed that he was about 13–14 steps away from accused when he saw him locking the door of Nabbu's house. He further deposed the factory of Kashi Jewellers was at a distance of about one furlong from the *galiyara*, the tubewell was around 40 steps away towards the south at a certain elevation in the field, and the Chandan Mill was about 30–32 steps away at a considerable height. He further deposed that upon seeing the dead body, he narrated the incident to other people present there and his statement was recorded by the inspector on the same day. He further deposed that he had not mentioned earlier about the lights emanating from the aforesaid premises illuminating the *galiyara* and denied the suggestion that he had not seen the accused locking the door and was deposing under pressure from the police authorities.

19. **PW-4 Smt. Asgari**, daughter of Smt. Ahmadi, deposed that she did not know the deceased prior to the incident and came to know her only when she came to reside with her mother, a day prior to the occurrence. She further deposed that the deceased had spent the previous night in her house and thereafter went to reside in the house of Nabbu along with accused Anwar and one of his (Anwar's) friends. She further deposed that her house and the house of Nabbu are adjacent to each other and the boundary wall between them is uneven in height. She further deposed that at about 8:00 P.M., she first heard the noise of a quarrel between the deceased and

the accused and also heard the deceased crying. On this, she, along with her mother and her sister, Akbari, peeped over the boundary wall, where they saw Haseena lying straight on the ground while both her shoulders were being pressed down by Anwar and his friend. On being questioned by her mother, the accused-appellant told him to mind her own business. She further deposed that a lantern was burning at the spot where the deceased was lying, though it was giving dim light. She further deposed that, earlier on the same afternoon, she had seen the accused and the deceased quarrelling in front of the gate of her house, where the accused-appellant, his friend, and two policemen were present. The accused-appellant was asking the deceased to return with him, but she was reluctant. Ultimately, she agreed upon persuasion by the policemen and one Tiwari Ji, on the condition that the accused would reside with her in some house in Magarwara and not in her matrimonial village. She identified the co-accused Bankey, who was present in the trial court, stating that she did not know him earlier and first saw him when he came to her house with Anwar. She further deposed that she had recognised him during the jail identification proceedings and did not see him in between. She further deposed that after witnessing the incident around 8:00 P.M., she had gone inside her house and subsequently heard the door of Nabbu's house being shut, though she did not got up to check.

20. During cross-examination, she deposed that it would be incorrect to say that Haseena had been residing in the house of Nabbu for about one month prior to the occurrence. She further deposed that when Anwar scolded Haseena, she presumed it to be a mere quarrel and did not apprehend that

Anwar would kill her. She further deposed that at night, of the occurrence, her mother (Ahmadi) went to the police chowki and later Tiwari Ji and the Chowkidar came to their house. She further deposed that both of them peeped through the intervening wall and saw Haseena lying motionless and dead on the floor, though she herself did not see the body. She further deposed that Chowkidar Mehboob had since died. She deposed that she did not narrate anything to Tiwari Ji or the Chowkidar, nor did Chhota Singh and Kallu Singh accompany them to her house. She denied the suggestion that Bankey was shown to her in Kotwali after his arrest.

21. **PW-5 Sohan Lal Shukla,** Sub-Inspector, Thana Kotwali deposed that on 27.04.1977 he was posted as Head Moharrir at Thana Kotwali. He further deposed that he received information regarding the incident when the Chowkidar, Mehboob, came to the Police Station at about 9:40 A.M. and reported the matter. He further deposed that he recorded the information as narrated by Mehboob and obtained his thumb impression thereon. He further deposed that Mehboob has since died.

22. **PW-6 Sat Narain Tiwari,** deposed that he did not know Anwar, his friend, or Haseena prior to the date of occurrence. He further deposed that on day of the occurrence, at around 12:00-12:30 P.M., he had gone to call his driver, Raees, who resided in front of Nabbu's house and was a neighbour of Ahmadi. He further deposed that at that time a Panchayat was convened under a Neem tree, which comprised two constables, himself, Ahmadi, Haseena, Sundara (mother of Raees), the accused Anwar and his friend Bankey, along with a small girl. He further deposed that Anwar wanted to take Haseena back with him, but she was reluctant and

agreed only to reside with him in a nearby house. He further deposed that as the house of Nabbu Chikwa, adjacent to Ahmadi's house, was vacant and the keys were with Ahmadi, permission was obtained and the keys were handed over to Anwar, after which he left for his factory. He further deposed that at around 9:00-9:30 P.M., while he was at Lakshmi Narayan Panwala shop, he saw both the accused along with the girl coming out of the *galiyara*. He further deposed that on inquiring Anwar told him that Haseena had run away and they were returning home. He further deposed that about 1 ½ hours later, Ahmadi came to him in a panic and informed him that the door of Nabbu's house was locked from outside, earlier there were noises inside the house but now everything had gone silent, and Anwar and his friend were not seen. He further deposed no constables were present at the Chowki as they had left to investigate another murder. He further deposed that he met the Chowkidar, Mehboob, on the way and narrated to him what Ahmadi had told and thereafter, they both went to Ahmadi's house. He further deposed that since the house was locked from outside, they peeped through the intervening wall and found a woman lying motionless and still under the *chapper* (thatch) to the left of the door, in dim lantern light. He further deposed that he became frightened and therefore instructed the Chowkidar to remain there until the police arrived. He further deposed that the next day when he came along with the *Kotwal*, he came to know that the dead woman was Haseena.

23. During cross-examination, he deposed that Raees worked as his driver and resided about 2–3 furlongs away from his own house. He further deposed that no documentation was prepared regarding the Panchayat. He denied

having visited Nabbu's house the following morning at around 5:00–6:00 A.M. and instead deposed that during said hours he had gone to Kanpur for his work.

24. **PW-7 Dr. V.K. Verma,** Senior Surgeon, District Hospital Banaras, deposed that on 28.04.1977 he was posted Senior Surgeon, District Hospital Unnao and on that day at 11:45 AM he had performed the post-mortem examination of the deceased. He further deposed that deceased was 22 years old and had been dead for 2-5 days, the rigor mortis had passed away, decomposition had begun, and the eyes had bulged out. The following ante-mortem injuries were found on the deceased's body:

Injury No. 1- Ligature mark, measuring 1½″ wide, in lower neck horizontally placed encircling the neck.

Injury No. 2- Contusion on lower aspect of chin on either side ½″ X ½″ in size.

25. He further deposed on internal examination he found that the brain was congested , larynx and trachea were also found congested and contained frothy mucus, the lungs were also congested and on dissection they emitted dark fluid, right side of the heart was full but left was empty, and the liver, spleen and kidneys were congested. He further deposed that in his opinion death was caused by asphyxia as a result of strangulation. He further deposed that deceased could have died on 26.04.1977 at around 8:00 or 8:30 PM and it is possible that injury no.1 could have been caused by a cloth being tightly wrapped around the neck.

26. During cross-examination, he deposed that decomposition usually begins two days after death, but it can begin earlier in the summers. He further

deposed that it is possible that the ligature mark of injury no. 1 could have been caused by thick rope. He also clarified that when he approximated the probable time of the death to 2- 5 days prior, he meant that the death must have occurred atleast two days and atmost five days since the date of post-mortem examinations.

27. **PW-8 Ram Shankar,** Sub-Inspector, deposed that from 27.04.1977 to 05.07.1978 he was posted as Sub-Inspector, Police Station Kotwali, Unnao and during that period Sukhpal Singh was posted as in-charge of station. He further deposed that on 27.04.1977 the investigation of this case was started and he in presence of Sukhpal Singh prepared panchnama of dead body (Ext. Ka 4), sketch of the dead body (Ext. Ka-5), challan lash (Ext. Ka-6), letter to CMO (Ext. Ka-7). He further deposed that the dead body was sealed and sent for post-mortem along with sample seal through Constable Md. Ishtiyak. He further deposed that the dhoti which was wrapped around the neck of the dead body, *Kathri* on which blood was spilled, and *Tat* on which vomit was laying were collected (Ext. Ka- 8 & 9 respectively). He further deposed that he had collected the bloodstained and plain soil (Ext. Ka-10) and also took the custody of the lock (Ext. Ka-11). He further deposed that on reaching the house of deceased (i.e. house of Nabbu), the same was found to be locked and when it was opened no one was present inside the house and he prepared the memo of belonging of the house (Ext. Ka-12). He further deposed he took the statement of witnesses namely Devi Prasad, Narendra Singh, Dhirendra Singh, CP Hardev Ram, Ramzan, Rasool Ahmed, Asgari , Akbari, Sundara, Chhota Singh, Kallu Singh, Mehboob Chowkidar, Laxmi Narayan and Satya

Narayan in his case dairy and prepared site plan (Ext. Ka-13). He further deposed that investigation was again conducted on 28.04.1977, wherein appellant was searched but was not found, statements of his parents were taken, and on 29.04.1977 search was again conducted but he was not found.

28. **PW-9 B.S. Chauhan**, Special Executive Magistrate, deposed that he conducted the Test Identification Parade (TIP) of co-accused Bankey @ Shakir at District Jail, Unnao. He further deposed that the statements of the accused relating to the witnesses were recorded in Column No. 1 of the memo, while the identification marks of the accused and the medical treatment received by him in respect of those marks were mentioned in Columns No. 3 and 4 respectively. He further deposed that he arranged around 10 under-trial prisoners of similar appearance and thereafter conducted the TIP. He further deposed that witnesses were summoned individually for identification and, after completion, were made to sit at a place ensuring no interaction with the remaining witnesses. He further deposed that nine physical witnesses participated in the TIP and each of them correctly identified the co-accused, Bankey, without any mistake. He further deposed that the entire procedure was duly recorded in the memo (Exhibit Ka-16).

Court Analysis:

Delay in lodging FIR:

29. It is argued on behalf of the appellant that the prosecution version deserves to be discarded on account of delay in lodging the FIR. However, it is a settled legal principle that delay in filing FIR by itself cannot be a

ground to doubt the prosecution case and discard it. The Hon'ble Supreme Court in ***Ravinder Kumar v. State of Punjab*, (2001) 7 SCC 690** has held:

"*13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.*

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR."

30. Similarly, in ***Sahebrao v. State of Maharashtra***, **(2006) 9 SCC 794**, the Hon'ble Supreme Court reiterated:

"*6. The settled principle of law of this Court is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory*."

31. Learned counsel for the appellant has placed reliance upon the judgments of the Hon'ble Supreme Court in ***Marudanal Augusti v. State of Kerala*****, (1980) 4 SCC 425**, ***Satpal Singh v. State of Haryana*****, (2010) 8 SCC 714**, and ***Kishan Singh (Dead) Thru Ors. v. Gurpal Singh & Ors.*****, (2010) 8 SCC 775**, however the principles laid down therein do not advance the accused-appellant case as even in these decisions, the Hon'ble Supreme Court has reiterated the same rule that the FIR should be lodged without unreasonable delay but where delay is satisfactorily explained, no adverse inference can be drawn.

32. Adverting to the facts of the present case, the incident occurred on 26.04.1977 at about 8:00–8:30 PM, when PW-2, Smt. Ahmadi, witnessed the accused along with his friend pressing the shoulders of the deceased. After an interval of about half an hour, she approached PW-6, Sat Narain Tiwari, and narrated the entire incident. PW-6 immediately proceeded towards the police chowki, where he was informed that the police personnel had already left for investigation of another murder case. On his return journey towards Nabbu's house, he met Mehboob, the chowkidar, who narrated the occurrence to him, and both of them rushed to the spot

where they found the house locked from outside. In the absence of any family members of the deceased and with no police personnel available at night, the very next morning, PW-5, the Sub-Inspector, received the information via the chowkidar and the FIR was promptly registered on 27.04.1977 at 9:40 AM. This explanation is not only natural and plausible but stands fully corroborated through the testimonies of PW-2, PW-6, PW-5 and PW-4 in a consistent and unshaken manner.

33. The short interval between the nocturnal occurrence and the formal recording of the FIR stands fully explained by the evidence on record, particularly in view of the absence of police personnel at the local chowki during the night. Thus, the FIR was lodged at the earliest opportunity available and no unexplained or deliberate delay can be attributed to the prosecution.

Presumption of Innocence — Applicability in Present Case

34. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in ***Vishnu Dutt Sharma v. Daya Sapra (Smt.)***, *(2009) 13 SCC 729*, particularly paras 13 and 15, to argue that the principle of presumption of innocence as a human right continues to operate and that the prosecution must prove its case beyond reasonable doubt. The Hon'ble Supreme Court observed that even in cases involving reverse burden clauses, strict proof of foundational facts is required, and that the standard of proof for defence is only preponderance of probabilities.

35. There can be no quarrel with the above principles. However, the said decision does not advance the case of the appellant in the present factual

matrix. Herein, the prosecution has independently and cogently established the foundational and substantive facts through the last-seen evidence along with the consistent depositions of PW-2, PW-4 and PW-6, the medical evidence of PW-7 which fully supports the prosecution version, and the incriminating conduct of the appellant in locking the house from outside and absconding thereafter.

36. Once the prosecution discharges its onus and a conviction has already been recorded by the learned Trial Court after a detailed appreciation of the evidence, the presumption of innocence stands weakened, and the appellate court interferes only if the findings are perverse or against the weight of evidence. This legal position has been reiterated even in the very judgment relied upon by the appellant , where the Hon'ble Supreme Court clarified that the presumption must be considered in the context of *other evidence on record*.

37. In the present matter, the appellant has not brought on record any material to probabilise his defence. On the contrary, his conduct post-incident is glaringly inconsistent with innocence. Therefore, the reliance placed by the learned counsel for the appellant on the aforesaid judgment is wholly misplaced and does not persuade this Court to take a view contrary to the well-reasoned findings of conviction recorded by the learned trial court.

Circumstantial Evidence and Theory of Last Seen Together:

38. Learned counsel for the accused-appellant has placed reliance upon the decisions of the Hon'ble Supreme Court in ***Kirti Pal v. State of West Bengal***, **(2015) 11 SCC 178** and ***Sujit Biswas v. State of Assam***, **(2013) 12 SCC 406**. However, the reliance so placed is wholly misconceived. The

principles laid down in the aforesaid decisions, when properly appreciated, rather fortify the case of the prosecution than assist the appellant. In both these judgments, the Hon'ble Supreme Court has categorically reiterated that in a case based on circumstantial evidence, the prosecution must establish an unbroken chain of circumstances leading only to the guilt of the accused, and further that the theory of last seen together is fully attracted when the time gap between the accused being last seen with the deceased and the occurrence of death is so narrow that the possibility of any third person intervening is completely ruled out. Therefore, far from advancing the defence, the cited authorities support the legal position that where the proximity of time between last seen and the death is clearly established, as in the present case, the accused is under a corresponding burden to offer a plausible explanation for the incriminating circumstances proved against him.

39. In the present case, PW-2, Smt. Ahmadi, and PW-4, Smt. Asgari, have categorically deposed that on the night of 26.04.1977 at about 8:00-8:30 P.M., they witnessed a quarrel inside the house of Nabbu, where the deceased Haseena was lying on the ground while the accused-appellant Anwar and his friend were pressing her shoulders down on the floor. PW-6, Sat Narain Tiwari, further corroborates that at about 9:00–9:30 P.M., both the accused were seen coming out of the *galiyara* and upon being questioned, the appellant attempted to mislead by stating that Haseena had run away. On the very next morning, Haseena was found dead inside the same house, locked from outside. Undisputedly, no witness saw the

appellant tying dhoti around the neck of the deceased Haseena. Therefore, the case rests on the circumstantial evidence.

40. The proximity of time between the deceased being last seen alive in the exclusive company of the appellant and his companion, the locked condition of the premises from outside when inspected after the occurrence, and the recovery of the dead body within a few hours thereafter, constitute a strong chain of circumstances pointing unerringly towards the complicity of the appellant. In such a fact situation, it was incumbent upon the appellant to offer a reasonable and cogent explanation as to how and under what circumstances his wife met a homicidal death within the precincts of a house occupied solely by them. However, apart from a bald denial, the appellant has failed to discharge this burden under Section 106 of the Evidence Act.

41. The law with regard to the circumstantial evidence is no longer *res integra*. The conditions for basing a conviction on circumstantial evidence were crystallised by the Hon'ble Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***, **(1984) 4 SCC 116** and have been consistently followed thereafter. Five golden principles laid under the aforesaid case are as follows :-

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

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

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) 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.

42. Moreover, the Hon'ble Supreme Court in ***Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681** has held:

"12. .....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 their innocence.

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house

cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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 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. In Nika Ram v. State of H.P. [(1972) 2 SCC 80 : 1972 SCC (Cri) 635 : AIR 1972 SC 2077] 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 [(1992) 3 SCC 106 : 1993 SCC (Cri) 435] 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....."

43. Thus, when viewed cumulatively, the circumstances proved by the prosecution — namely, prior matrimonial discord; the deceased's unwillingness to accompany the appellant; accused being last seen with the deceased inside the house; the door being locked from outside by the accused; immediate disappearance of the accused from the scene; and recovery of the dead body under suspicious circumstances within a few hours — form a complete chain leading solely to the conclusion that the appellant is responsible for the death of his wife Haseena. No plausible hypothesis of innocence has been offered by the appellant to break this chain.

Effect of Acquittal of Co-Accused and the Doctrine of *Falsus in Uno, falsus in omnibus:*

44. The learned counsel for the appellant has further contended that since the co-accused, Shakir @ Bankey, has been acquitted by the learned Trial Court, the testimony of the prosecution witnesses ought to be disbelieved insofar as it concerns the appellant. This Court is unable to accept the said submission.

45. The Hon'ble Supreme Court in ***Narain v. State of M.P.***, **(2004) 2 SCC 455** has held:

" *8.* ***As a rule of universal application, it cannot be said that when a portion of the prosecution evidence is discarded as unworthy of credence, there cannot be any conviction.*** *It is always open to the court to differentiate between an accused who has been convicted and those*

who have been acquitted. (See Gurcharan Singh v. State of Punjab [AIR 1956 SC 460 : 1956 Cri LJ 827] and Sucha Singh v. State of Punjab [(2003) 7 SCC 643 : 2003 SCC (Cri) 1697 : (2003) 5 Supreme 445] .) ***The maxim "falsus in uno, falsus in omnibus" is merely a rule of caution.*** *As has been indicated by this Court in Sucha Singh case [(2003) 7 SCC 643 : 2003 SCC (Cri) 1697 : (2003) 5 Supreme 445]* ***in terms of felicitous metaphor, an attempt has to be made to separate the grain from the chaff, truth from falsehood.*** *When the prosecution is able to establish its case by acceptable evidence, though in part, the accused can be convicted even if the co-accused have been acquitted on the ground that the evidence led was not sufficient to fasten guilt on them. But where the position is such that the evidence is totally unreliable, and it will be impossible to separate the truth from falsehood to an extent that they are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made, conviction cannot be made.*"

46. Similarly, in ***Ram Vijay Singh v. State of U.P.,*** **(2021) 15 SCC 241**, the Hon'ble Supreme Court reiterated that the principle of *falsus in uno, falsus in omnibus* is not a rule of law, but merely a rule of caution, and the Court is well within its jurisdiction to rely upon part of the testimony while discarding the rest which is not proved.

47. Furthermore, it has been held by the Hon'ble Supreme Court in ***P. Kunhali v. State of Kerala,*** **1998 SCC (Cri) 1358** that benefit of doubt extended to some accused due to absence of clear role against them cannot

automatically inure to the benefit of other accused against whom reliable and cogent evidence is available.

48. Applying the aforesaid legal principles to the facts of the present case, it is evident that the role of the appellant, Anwar, stands on a completely different footing. The prosecution witnesses have consistently deposed that the deceased was last seen alive in the exclusive company of the appellant inside the house and that immediately prior thereto, a quarrel had taken place between them. The appellant was further seen leaving the house during the night along with his minor daughter. His conduct thereafter in absconding and not offering any plausible explanation under Section 106 of the Evidence Act also lends assurance to the prosecution case.

49. On the contrary, the learned trial court has obsereved in its judgment that the participation of co-accused Shakir @ Bankey at the time of the actual commission of the offence could not be established beyond reasonable doubt, resulting in his acquittal. Hence, such acquittal does not in any manner undermine the consistent and credible evidence led against the appellant.

50. Accordingly, this Court finds no substance in the argument advanced by the learned counsel for the appellant that the conviction cannot stand merely because the co-accused has been acquitted.

No contradiction between Ocular and Medical Evidences:

51. It is a well-settled principle of criminal jurisprudence that when the ocular testimony of trustworthy witnesses is fully consistent with and duly corroborated by the medical evidence, the prosecution case stands

significantly strengthened. Medical evidence is primarily opinionative in nature and is meant to assist the Court in appreciating the direct evidence available on record. It can only discredit ocular testimony when there exists a direct and irreconcilable conflict between the two. In the absence of such contradiction, the ocular version must be given due primacy.

52. In the present case, learned counsel for the appellant has placed reliance on the judgments in ***Krishnegowda and Ors. v. State of Karnataka***, **(2017) 13 SCC 98** and ***Sunil Kumar Shambhudayal Gupta (Dr.) v. State of Maharashtra***, **(2010) 13 SCC 657**, to assail the consistency of ocular testimony. However, a careful reading of these decisions makes it evident that the Hon'ble Supreme Court has reiterated the same principle: only where there is a material contradiction between medical and ocular versions, an adverse inference may be drawn against the prosecution. In the case at hand, no such contradiction exists. Rather, the medical evidence is entirely in line with the consistent and credible ocular versions of PW-2 and PW-4.

53. The post-mortem report and testimony of PW-7, Dr. V. K. Verma, establish that the cause of death was asphyxia due to strangulation. The presence of a ligature mark encircling the neck along with congestion of the larynx, trachea, lungs and abdominal organs, bulged eyes, congestion in major organs and the right side of the heart being full of dark fluid blood, and the vomiting along with complete absence of food from the stomach further indicate the application of force leading to acute respiratory obstruction. These all together are characteristic features of homicidal strangulation. The medical findings are further supported by authoritative medical

jurisprudence. *Taylor's Principles and Practice of Medical Jurisprudence, 13th Ed. 1984*, Volume-I, at pages 282-283 explains that asphyxia results from mechanical interference with breathing, leading to cyanosis, venous congestion, and impairment of oxygenation. Furthermore, *Modi's Medical Jurisprudence and Toxicology, 13th Ed., at pages 155, 158-161*, describes the exact internal and external findings present where strangulation is the cause of death — including congestion of lungs, dark blood in the right heart chambers, swollen congested face, petechiae, prominent eyes, and potential bleeding from natural orifices depending upon the degree of violence.

54. All such clinical findings are duly observed in the present case and fit squarely with the ocular version that the deceased was assaulted by manual and mechanical pressure applied by the accused upon her neck and upper body while she lay on the ground. The doctor's opinion that the death occurred around 8:00–8:30 PM on 26.04.1977, corresponding exactly to the time when the deceased was last seen alive in the company of the accused, furnishes strong corroboration to the prosecution case.

55. Thus, the harmonious consistency between the direct ocular evidence of PW-2 and PW-4 and the medical testimony of PW-7 leaves no room for doubt or suspicion. The medical evidence lends complete assurance to the prosecution narrative that the death of Haseena was homicidal and not accidental or suicidal. Therefore, the argument of the learned counsel for the appellant alleging conflict between ocular and medical evidence is entirely misconceived and stands rejected.

Decomposition of the Dead Body and Medical Timeline:

56. It is a settled principle that the onset and cessation of rigor mortis and the commencement of putrefaction cannot be measured with mathematical precision. These physiological changes depend on several variables such as temperature, humidity, condition of the body, surrounding environment, the nature of injuries, and time since death. Thus, no universal formula can be applied to determine the exact timing of death solely on the basis of rigor mortis or decomposition.

57. Learned counsel for the appellant has relied upon ***Daryao Singh vs. State of Madhya Pradesh*, (1991) 2 SCC 588**, wherein the Hon'ble Supreme Court held that decomposition is a natural process of putrefaction and its rate is largely dependent upon environmental and climatic conditions, particularly heat and humidity. It was further held that during summer months, putrefactive changes can set in and progress rapidly, and, therefore, medical observations of decomposition must be appreciated in the backdrop of surrounding circumstances.

58. In the present case, the death of the victim occurred on 26.04.1977 around 8-8:30 P.M., and the post-mortem examination was conducted on 28.04.1997 at around 11:45 P.M. Thus, approximately two days (about 51–52 hours) had elapsed between the death and medical examination. It is medically recognized that rigor mortis passes off within 18–36 hours, and in summer conditions, both rigor mortis and putrefactive changes occur earlier and progress faster. PW-7, Dr. V.K. Verma, specifically noted that decomposition had commenced and rigor mortis had completely passed off. He also opined that the death must have occurred at least two

days and at most five days prior to the post-mortem — a finding which is entirely consistent with the timeline of the incident.

59. Thus, the observations of PW-7 are in complete consonance with established forensic medical principles and fully reconcile with the timeline alleged by the prosecution. There exists no discrepancy, much less any inconsistency of such magnitude as to cast doubt upon the prosecution case. Rather, applying the very principle recognized by the Hon'ble Supreme Court in *Daryao Singh* (supra), the medical condition of the corpse supports the prosecution case and fully aligns with the established timeline of the occurrence.

Conclusion:

60. Upon a comprehensive evaluation of the ocular testimonies, medical and forensic evidence, conduct of the accused, and the principles governing circumstantial evidence, this Court is satisfied that the prosecution has successfully established a complete chain of circumstances pointing unerringly towards the guilt of the appellant. The defence has failed to provide any plausible explanation for the homicidal death of the deceased — his wife — inside a locked premises wherein she was last seen alive in his exclusive company. No material contradiction or legal infirmity has been demonstrated so as to shake the credibility of the prosecution case or to create any reasonable doubt benefiting the appellant.

61. The impugned judgment and order passed by the learned Trial Court do not warrant any interference by this Court. The conviction recorded and sentence of life imprisonment awarded to the accused-appellant Anwar are hereby **affirmed**.

62. Consequently, the criminal appeal stands **dismissed**. The appellant is on bail. He is directed to surrender before the court concerned within 15 days from today, failing which, the appellant shall be taken into custody by the court concerned and sent him to jail to serve out the sentence awarded by the trial court and confirmed by this Court.

63. Let a copy of this judgment, along with the lower court record, be transmitted forthwith to the court concerned for information and compliance.

(Zafeer Ahmad,J.) (Rajnish Kumar,J.)

Order Date :-12.12.2025
Kanhaiya

Digitally signed by :-
KANHAIYA KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench