2025:AHC-LKO:79401-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No. – 2259 of 2017

Jitendra Pal **…..Appellant(s)**

Versus

State of U.P. **…..Respondents(s)**

Counsel for Appellant(s)	:	Akash Dikshit, Neeraj Singh, Rajesh Kumar Sharma
Counsel for Respondent(s)	:	Govt. Advocate

A.F.R.

Reserved on 14.10.2025

Delivered on 27.11.2025

Court No. - 9

HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

1. Heard Shri Neeraj Singh and Shri Akhilendra Kumar Goswami, learned Counsels for the appellant, as well as Shri Umesh Verma, learned A.G.A. for the State.

2. The present Criminal Appeal has been filed against the impugned judgment and order dated 25.08.2017, passed by the learned Trial Court in Sessions Trial No. 205 of 2015, arising out of Case Crime no. 124 of 2015, whereby the Appellant has been convicted under Section 302 I.P.C. and sentenced to undergo Rigorous Imprisonment for Life and fine of Rs. 20,000/- in default of payment of fine, additional Rigorous Imprisonment for one year.

CASE OF THE PROSECUTION

3. The factual matrix leading up to the filing of the present Criminal Appeal is delineated herein below:

3.1) In the present case, with respect to an incident occurred on 09.03.2015, a written *tehrir* was filed with Police Station Ajgain, District Unnao, by the informant namely Smt. Kunta, mother-in-law of the Appellant on 10.03.2015, with the averments that her daughter namely Anita (deceased) had been married to the Appellant-Jitendra Pal, about two years ago. On 09.03.2015, the appellant brought his wife Anita to the informant's house at Sheetal Kheda, around 11 AM and after dropping the deceased at her parental home, took the informant (mother-in-law) to Makhdoom Nagar, also known as Ludhausi, Safipur, District Unnao, for attending a family wedding. After dropping the informant at the venue of the said wedding, the appellant returned back to the informant's home at Sheetal kheda and stayed with her wife Anita therein and thereafter, left the informant's house on the same night, along with the deceased carrying her jewellery and cash on a motor-cycle.

3.2) In the next morning *i.e.* on 10.03.2015 the informant received an information that Anita was found lying dead in a wheat field outside village Teliyani. Upon receiving this information, informant along with other family members arrived at Teliyani, Hasanganj, District Unnao and found ligatures marks on her daughter's neck, indicating a strangulation. Informant has alleged in the said *Tehrir* that the appellant along with the help of someone, strangulated her daughter and then dumped her body in the wheat field of the village Teliyani. The informant has further alleged that the appellant was having an affair with another woman, which led to the said incident with her deceased daughter, Anita. She also stated that the appellant was lastly seen on 09.03.2015, around 8 pm, while returning to the

informant's house after leaving her at her *mayka,* by one Nisha, who is the appellant's cousin father-in-law's daughter.

3.3) Based on the aforesaid given written information, Case Crime No. 124 of 2015, under Section 302 of the Indian Penal Code, was registered against the appellant (Exhibit Ka-1) at Police Station Ajgain, District Unnao. Police arrived at the scene and took possession of the body of the deceased and upon the direction of Magistrate, the local Police Officer prepared the '*Panchayatnama*' and sent the dead body to the mortuary for postmortem. In the postmortem report (Exhibit Ka-4), the medical officer found the cause of death to be suffocation, which was likely due to the neck being strangulated by a noose.

3.4) During investigation by the police, the crime scene of the incident was inspected and a site-map was prepared by the Investigating Officer. The statements of witnesses and other witnesses' familiar with the incident were also recorded under Section 161 Cr.P.C., and after collecting evidences, the investigation was culminated in submission of Charge-sheet under Sections 302 I.P.C. against the appellant.

3.5) Cognizance was taken in the matter by the concerned Magistrate whereafter, case was committed to the Court of Session vide order dated 23.05.2015 and the case was registered as Sessions Trial No. 205 of 2015 (*State vs. Jitendra Pal*) arising out of Case Crime No. 124 of 2015 under Section 302 Indian Penal Code, Police Station Ajgain, District Unnao. The Court of Session framed charge against the appellant under Section 302 of the Indian Penal Code. However, the appellant denied the charge and demanded for a Trial. Therefore, the case was taken up for Trial.

4. PROCEEDINGS BEFORE THE TRIAL COURT

4.1) During the Trial, in order to prove the charge against the appellant, the prosecution examined the following witnesses namely:

1	H.C.P. Lavkush Pandey	PW-1	Official witness for proving the registration of FIR
2	Smt. Kunta Devi Pal	PW-2	Witness of fact/ Mother of deceased
3	Nisha Devi	PW-3	Witness of fact/ Cousin-Sister of deceased
4	Raju Pal	PW-4	Witness of fact/ villager
5	Dr. Arun Kumar Sachan	PW-5	Medical doctor to Prove the Post Mortem Report
6	S.D.M. Udaybhan Singh	PW-6	To prove the Inquest report
7	S.I. Vijay Kant Mishra	PW-7	Investigating Officer
8	Tej Pal	PW-8	Villager, Witness of recovery of Broken piece of Bangles (Ka-19) from the crime spot & Inquest Report
9	Dheeraj Pal	PW-9	Witness of fact/ Brother

4.2) Furthermore, the prosecution also relied on the following important documentary evidence, to substantiate its case: -

i.	First Information Report	Exhibit Ka-1
ii	Written Report	Exhibit Ka-3
iii	Postmortem Report	Exhibit Ka-4
iv	*Panchayatnama*	Exhibit Ka-5
v	Site Plan	Exhibit Ka-11
vi	*Fard*/Recovery Memo of 4 pieces of broken Bangles from the crime spot, where the deceased body was found	Exhibit Ka-12
vii	*Fard*/Recovery Memo of pieces of	Exhibit Ka-13

	broken Bangles from the *Verandah* of the complainant	
viii	Call Details Record (C.D.R.)	Exhibit Ka-15
ix	*Fard*/Recovery Memo of Mobile Phone-INTEX of Accused/ Appellant from his person	Exhibit Ka-16
x	Charge-sheet	Exhibit Ka-17

4.3) During Trial, the prosecution heavily relied on the oral evidence of the above prosecution witnesses and the related documentary evidences, namely, FIR, General Diary(GD), written *Tahrir*, postmortem report, Inquest report/Panchayatnama, letter to CMO, challan of dead body, letter to RI, sample seal, *Naksa Nazari*, Fard broken bangles, CDR details, Fard mobile and charge sheet, Exhibit A-1 to Exhibit A-17, and strived to prove the charge against the appellant beyond reasonable doubt, though, there was no ocular witness to the present incident and the entire case was based on circumstantial evidence.

4.4) During the examination by the prosecution, the **PW-1** H.C.P. Lavkush Pandey, who was the FIR writer in the present case, has testified the contents of the FIR as well as of the General Diary. The witness denied the defence's suggestion during cross-examination that the complaint was registered after meeting with the complainant, in the absence of orders from the higher officials.

4.5) The informant Smt. Kunta Devi Pal was produced as **PW-2**, who has fully supported the prosecution case. Additionally, PW-2 has testified that the appellant was in a love affair with another woman, leading to her daughter’s death. She also stated that Nisha Devi, her Cousin Father-in-law’s daughter had last seen the deceased along with the appellant. Furthermore, PW-2 testified that relying upon her complaint the Police arrived at the crime spot, conducted *Panchayatnama* of her daughter's dead body, sealed it, and sent the deceased’s body for a post-mortem.

During her cross-examination, the informant-witness PW-2 has testified that the appellant had come with the deceased upon her

request only, to take care of her house, as she would be attending a family wedding at Ludhausi, Safipur, District Unnao. She admitted the *factum* of Nisha, informing her about appellant's returning to his matrimonial home on the same evening. Also, she had written a report on paper, though she is an illiterate lady. Further, she cannot explain why she did not include anything in the report pertaining to what the deceased said to her about the love affair of the appellant. She stated that *Teliyani* was located 2-3 KM from her village. Her family consisted of her husband and elder son, who were working in Surat and her younger son had gone to attend a marriage in a nearby village located about 2 KM and had not come home on the said night of incident. PW-2 refuted the defence's suggestion that the deceased had love affair with a village boy before marriage and that boy was not happy of the deceased being married to someone else. She further refuted the defence's suggestion that due to fear of public shame, she has chosen not to name the said village boy and instead named the appellant in her written complaint.

4.6) **PW-3**, Nisha Devi was examined by the prosecution wherein she testified that the deceased had not said anything to her, before her death. On 9.03.2015, at 11:00 AM, the appellant brought his wife, Anita, to Sheetal kheda and took his mother-in-law to the wedding venue on his motorcycle and then returned to the village on the same evening. She testified that she didn't see the appellant taking Anita away on the motorcycle. Furthermore, on the next morning, she heard that the appellant had murdered his Wife-Anita, because the appellant was having an affair with another woman. During her cross-examination by the defense, PW-3 stated that she did not know the girl with whom the appellant was having any affair.

4.7) **PW-4**, Raju Pal was examined by the prosecution wherein he has testified that the deceased's home is next to his in the same village. He testified that the deceased was married to the appellant two and a half years ago, before the incident. He also stated that the

appellant was working in Nainital and just after one and half year of their marriage, information spread in the neighborhood & the entire village that Anita's husband was of unsavory conduct and was involved with a lady in Nainital. On 09.03.2015, the appellant returned to the village around 6 PM on his motorcycle. A short while later, PW-4 stated that he met the deceased, who was leaving with the appellant on his motorcycle. He asked them where they were going that evening, to which the appellant replied that he would be returning back shortly, but they never returned. The next day, Anita's body was found in a wheat field in Teliyana. He, along with many villagers, went to see the body.

During his cross-examination by the defense, he testified that Smt. Kunta Devi Pal is his Aunt. On the day of the incident, he had gone to attend a *Thervi ceremony* in the neighboring village of Mikhani Kheda. The PW-4 denied the suggestion of the defense that on the day of the incident, he was not in the village at all. The witness has also denied the suggestion of the defense that he did not see the appellant coming or going anywhere on the day of the incident.

4.8) The prosecution examined **PW-5**, Dr. Arun Kumar Sachan, the medical officer, who conducted the post-mortem of the deceased and has verified the injuries sustained by the deceased. In the Autopsy report, the probable time of death was approximately one and a half days before the time of the examination. The cause of death was asphyxia, which is possible due to a noose around the neck. The said witness also stated that it was not possible for the deceased to have died by hanging herself; rather, she could have died by strangulation. The deceased's death is likely to have occurred sometime during the night of March 9th -10th, 2015. The post-mortem reports were prepared in his handwriting and signature at the time of the examination, as well as signed by her colleague, attested as to Exhibit Ka-4. In his cross-examination, the witness has withstood his testimony relating to her ‘statement of death by

strangulation', which he stated was given based on the symptoms mentioned in the post-mortem report.

4.9) **PW-6** Udaybhan Singh, SDM, was examined by the prosecution wherein he has testified in detail about the procedure followed during the Panchayatnama proceedings and has supported the prosecution case.

4.10) **PW-7** Inspector Vijay Kant Mishra, is the Investigating Officer of the case, who has explained the steps taken during the course of investigation and has supported the prosecution case on the basis of evidence collected during the investigation. He further testified about the Site Map/Plan (Exhibit Ka-11) prepared by him, as well as recovery of Four pieces of red bangles which were found lying at the scene of the incident & subsequently, sealed in a cloth and taken into police custody. During further investigation and while keeping surveillance upon the appellant's call records, the said PW-7 has stated that the cell phone location of the appellant was found near the place of incident on 09.03.2015. He has testified relating to the Mobile number used by the Appellant and the lady, with whom the appellant had love affair. In the same sequence, on 15.03.2015 the appellant was arrested at Chamrauli Mod at 5:45 PM. PW-7 has further testified that the appellant has stated in his statement, while confessing to the crime that he had fallen in love with Sardarni named '*Guddi*', whose husband had already died. They both were in regular contact with each other over phone, but his wife had a dispute over this matter, which is why the appellant murdered her.

During his cross-examination by the defense, the PW-7 did not disclose on whose name the SIM card number in question was taken. The witness refuted the defense's claim that, at the complainant's request, he had shown the mobile number in question. He denied suggestion that the mobile recovered from the Appellant was being used by the appellant himself and that phone number had neither been recovered from nor used by the appellant.

4.11) Tejpal was examined by the prosecution as **PW-8,** who remain present all the time at the site of incident and even certified the Panchayatnama, being a witness. During Cross-examination, the witness refuted the defense's claims that he was coerced into signing a blank form or that he had provided false testimony on her aunt's request.

4.12) Dheeraj Pal (brother of deceased) was examined by the prosecution as **PW-9,** he has testified that the appellant while living in Nainital was working as a blacksmith, before and after his marriage. He testified that his sister used to tell him, that the appellant was having an affair with the blacksmith shop owner, Sardarini. His mother and others were well aware with the said fact. His sister Anita and the convict/appellant used to have regular fighting as a result of the same and that is why the appellant killed his sister.

During his extensive Cross-examination, the PW-9 has stated that neither him nor anyone from his family had been to Nainital, where the convict /appellant was residing and working. He did not know the name of the Sardarini, with whom the appellant was having an affair. The witness vehemently denied the defense suggestion that appellant’s relationship with the Sardarini is a fallacious statement just because he is the deceased's brother.

5. On the basis of the above material produced and oral witnesses testified as well as relying upon the law and principles laid down in catena of judgments by the Hon’ble Apex Court in the cases of the conviction on the basis of circumstantial evidence, the learned Court of Sessions by its judgment and order dated 25.08.2017 reached to a conclusion relating to the guilt of the appellant, having been proved ‘beyond reasonable doubt’ against the appellant and consequently, the appellant was convicted and sentenced under Section 302 I.P.C. with Rigorous Imprisonment for Life and Fine of Rs. 20,000/- and in case of default in payment of fine, additional rigorous imprisonment for one year.

6. It is in his aforesaid background that the Appellant as being aggrieved, has preferred the present Appeal under section 374(2) of the Criminal Procedure Code against the Impugned Judgment and order dated 25.08.2017 passed by the Ld. Trial Court in Sessions Trial No. 205 of 2015 (State Vs. Jitendra Pal) arising out of Case Crime No. 124 of 2015, Ajgain police station, District Unnao.

7. SUBMISSION ON BEHALF OF THE PARTIES

7.1) Challenging the impugned Judgment and order of conviction and sentence dated 25.08.2017, learned Counsel for the appellant has submitted that the Court of Sessions has erred in recording the findings of conviction and sentence against the appellant. According to the learned Counsel, the prosecution has completely failed to prove its case beyond reasonable doubt, as well as the testimony of witnesses are neither reliable nor has been corroborated with sufficient evidences and the appellant has been falsely implicated in the present case. He has further submitted that the Learned Trial Court has completely ignored the fact that there is no independent witness supporting the prosecution's case and the findings are solely based upon surmises and conjectures.

7.2) Learned Counsel has sought to contend that the entire prosecution case rests solely upon circumstantial evidence. There is no direct or ocular witness to the alleged act of strangulation. The evidence produced by the prosecution fails to satisfy the well-settled principles which are required to be a foundation stone for the conviction of the appellant on circumstantial evidence.

7.3) It has been contended that none of the circumstances has been proved conclusively. Furthermore, the so-called "last seen" witnesses are unreliable as they lack any substantive corroboration because PW-3 (Nisha Devi) has admitted that she did not saw the appellant taking the deceased away and subsequently, PW-4 (Raju Pal), a related witness, has also given contradictory versions

regarding his presence; although he admitted attending a *theravi ceremony* in another village on the same date, which casts serious doubt on his testimony. Hence, the "last seen together" circumstance collapses.

7.4) Learned Counsel for the appellant has further contended that even the alleged motive is speculative without rendering any substantial proof for the same. The alleged affair with a woman named "Gudddi" is unsupported by any independent proof. Even not a single witness from Nainital or his workplace has been produced or examined. Even PW-9, the brother of the deceased, has admitted that he never visited Nainital and did not know the said woman. Thus, motive remains unestablished. The alleged recoveries are even doubtful. Hence, the chain of circumstances is incomplete as well as inconclusive in the present case.

7.5) Learned Counsel has submitted that Medical Evidence produced on record are not even conclusive in nature for punishing the appellant for the offence of Murder. The postmortem only indicates death by asphyxia; it does not identify the appellant as the perpetrator.

7.6) Learned Counsel for the appellant has finally submitted that the presumption of innocence stands fortified in the present matter, and unless the prosecution proves guilt beyond reasonable doubt, conviction cannot stand. He has also taken a stand that, except for evidence of last seen together, there was no other incriminating material against him and the nature of circumstantial evidence available against him raised merely a doubt that he may have committed the murder, but the same being not conclusive, the Appellant cannot be convicted only on the basis of last seen together and in that regard relied on the judgment of ***Padman Bihar Vs State of Odisha,*** reported in ***AIR 2025 SC 2538.***

7.7) *Per contra,* learned Additional Government Advocate (A.G.A.) appearing for the State has opposed the contentions advanced by learned Counsel for the appellant and has submitted that the prosecution's case is well-founded and fully proved by a chain of circumstantial evidence, leading to no other hypothesis than the guilt of the appellant-*Jitendra Pal*, for the murder of his wife, Smt. Anita Pal (deceased), punishable under Section 302 I.P.C. It has been further argued that the appellant was involved in an extra-marital relationship with a woman ("Guddi") at his workplace in Nainital. The deceased had complained of this affair to her mother (PW-2) and brother (PW-9) and the entire village knew about it as also (PW-4). This provided a strong motive for the appellant to eliminate his wife, as she was opposing his illicit conduct.

7.8) Learned A.G.A. has further contended that the prosecution has relied on the 'last seen together' circumstance, as PW-3 (Nisha Devi) and PW-4 (Raju Pal) both have deposed that on the evening of 09.03.2015, the appellant was seen leaving his home with the deceased on his motorcycle, and both did not return thereafter. On the following morning, 10.03.2015, Anita's dead body was found in a wheat field near village Teliyani. The proximity of time between the deceased being last seen with the appellant and her homicidal death points unerringly towards the guilt of the appellant.

7.9) Learned A.G.A. has also drawn the attention of this Court towards the alleged recovery and corroborative materials produced in the present case. The broken red bangles recovered near the body (proved by PW-8 Tejpal) establish a scuffle at the scene. CDR (Call Detail Record) evidence proved by the Investigating Officer (PW-7 Vijay Kant Mishra) placed the accused's mobile location near the scene of crime around the relevant time. The appellant was arrested with a mobile phone from which calls to the said woman were

made, with whom he was in continuous touch on the date of incident. In his disclosure statement, he admitted to having quarreled with his wife over his affair.

7.10) Furthermore, Learned A.G.A. has questioned the subsequent conduct of the appellant, as he absconded after the incident and did not inform the complainant or the police, of his wife's disappearance, which further indicates his guilty mind and conduct. Thus, according to him, a complete chain of the circumstances has been interwoven and as such the impugned judgment and order of the learned Trial Court, does not requires any interference.

DISCUSSIONS AND FINDINGS

8. We have heard the learned Counsel for both the parties and perused the materials brought on record. The power of this Court as being the 1st Appellate Court under Section 386 Cr.P.C. are as wide as the Trial Court. This Court in view of the power having been bestowed by the aforesaid provision has a mandatory duty to analyses all the evidence brought on record and then to consider, whether the Trial Court's assessment of evidence and its opinion regarding conviction deserves and/or requires any interference.

9. After hearing the learned counsel for the parties and having perused the materials on record, this Court has given its anxious thought to the entire gamut of facts and evidences led by the parties in the present case and is of the view that there is no quarrel that the present case is purely based on circumstantial evidence as there is no ocular witness. The law is no longer trite that as far as circumstantial evidence is concerned, the events have to be so intertwined and connected, so that together they form an unbreakable complete chain, wherein the only hypothesis available would be pointing towards the guilt of the Accused. In this regard, the law holding the ground is the

landmark judgment of the Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sharda v. State of Maharashtra,*** reported in ***(1984) 4 SCC 116,*** wherein it has been held that;

> ***"153.*** *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*
>
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*
>
> *It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793: 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*
>
> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*
>
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) the circumstances should be of a conclusive nature and tendency,*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*
>
> *154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.***"**

10. In the present case, the curtain raises with the recovery of a dead-body of the deceased Anita, wife of the appellant, on 09.03.2015 at village Teliyani, Unnao. A written complaint came to be lodged by the mother-in-law (PW-2) of the appellant. Interestingly, PW-2, complainant has stated in her complaint that the deceased was last seen together with the appellant by PW-3 (Nisha Devi). Thus, a last

seen theory has also been developed by the prosecution in order to bring home the charges against the appellant. Therefore, this Court, while examining the evidence brought on record, would be analyzing not only the circumstantial evidence which has been led against the appellant but would also analyze the last-seen theory, which has been propounded by the prosecution story. Apparently, a 'motive' has been also sought to be accorded to the said incident by further unfolding the story by narrating that the appellant due to an illicit relationship with one "Guddi" of Nainital, had not been treating the deceased properly and there was continuous fight between them, and therefore, to remove the said obstacle from their illicit relationship, the appellant had a motive to commit the said crime. Thus, according to the prosecution a complete chain of events stands interconnected, which points towards the guilt of the appellant.

11. As far as the death of deceased (Anita) is concerned, her dead-body was found at village Teliyani in a wheat-field which is about one and a half kilometer away from her parental home, located at village Sheetal khera. The Inquest report which has been exhibited as Ka-5, invariably states that the ligature mark present on front of neck which might be due to rope and the *panchayatnama* does not record any other injury on the body of the deceased. Although, the inquest report records the status of dead-body of the deceased Anita, however, since the cause of death was not clear so the body was send for postmortem-examination. In the post mortem report which has been exhibited as Ka-4 it is noted that *rigor mortis* passed off from neck and upper extremities and was present in Lower limb and as far as the ante-mortem injuries are concerned, it specifically notes ligature mark present on the front of neck. It also mentions that the death was caused due to ante-mortem strangulation and immediate cause of death is asphyxia. This Court notes that the said post mortem report has been proved by PW-5, Dr. Arun Kumar Sachan who has stated in his testimony that the death was caused by

tightening of rope on the neck, which was not possible to be done individually by the deceased herself and the death has happened in the intervening night of 09/10.03.2015. From the aforesaid evidence, it is clear that the death of deceased Anita Pal is not a suicide, according to opinion of the medical expert (PW-5) and is *homicidal.*

12. Further, the inquest report contains details about clothes fully worn by the deceased, a yellow metal ring in the middle finger of the right hand, white metal rings in the toes. Thus, taking into consideration the inquest report and keeping in view the clothes and the metals available on body of the deceased, the reason for robbing or any other such act is totally ruled out. The post mortem report also does not disclose any sexual assault on the Deceased-Anita. Thus, the motive of robbing or sexual assault is altogether ruled out.

13. As the story unfolds further, it has been stated by PW-1, the *de facto* complainant and also mother of the deceased that she had given her daughter in marriage to the appellant few years back and on the said fateful day of 09.03.2015, just after the festival of Holi, the deceased along with her husband, who is the appellant herein, came to her house at Sheetal khera at around 11 AM and after leaving deceased Anita Pal at her parental place, took the PW-2 to her brother's village at Ludhausi, Safipur, District Unnao to attend a marriage ceremony. In her examination-in-chief, she has stated that since her son-in-law *i.e.* the appellant had a love affair with some other lady, therefore, he has killed her daughter and has also stated that her cousin, father-in-law's daughter, namely, Nisha had last seen her daughter along with the appellant, leaving on his motorcycle at around 8PM in the night. However, this Court find that PW-3, Nisha Devi, during her examination-in-chief, has specifically stated that she had not seen the deceased going along with the appellant on his motorcycle, although she has corroborated the other statements of PW-2, relating to her story of first dropping the deceased at her parental home by the appellant and then taking the PW-2 to her brother's place for a marriage to Ludhausi, Safipur, District Unnao and subsequently

coming back alone to village Sheetal khera. PW-3 also supported the statement of PW-2 as far as the love affair of the appellant with some other lady was concerned.

14. This Court finds that PW-4 (Raju Pal) is a villager and neighbor of PW-2 and has corroborated the statement of PW-2 and PW-3 as far as coming of the appellant along with his wife to Sheetal khera at around 11 AM on the fateful day. He has also supported the statement of the PW-2 as far as leaving of the deceased at her home and taking his mother-in-law to attend marriage ceremony at village Ludhausi. He has also stated in his examination- in-chief that he saw the appellant returning to the village at around 6 p.m. in the evening and after a short while taking away the deceased (Anita) along with him on his motorcycle after sometime. He has also stated that he asked the appellant as to where both were going, to which the Appellant had replied that they will be coming back in a short while. This Court finds that PW-4 was subjected to intensified cross-examination to his statements, however his testimony relating to 'last seen together' of the deceased and the Appellant, remained intact.

15. From the aforesaid statements, although it can be argued that there are some inconsistency and variation in the statements of PW-2, PW-3 and PW-4 relating to the last seen together theory propounded by the prosecution, as PW-2 stated that PW-3 had told her about the deceased having been last seen together with the appellant and subsequently, PW-3 denying the same, but one thing remains intact that the appellant did come to Sheetal khera on 09.03.2015 and he, after leaving the deceased at her matrimonial home, took his mother-in-law to attend a marriage at his brother's place at village Ludhausi and again came back alone to Sheetal khera, where the deceased-Anita was present. Therefore, the coming and presence of the Appellant at Sheetal Khera, which is located in the vicinity of the place where the dead body of Deceased-Anita was found has been proved and remains unchallenged.

16. Further, PW-4 is a villager and nowhere it has come in evidence that he was inimical to the appellant or had any reason to testify in favour of the prosecution. He is the witness, who has stated that he has last-seen the appellant along with the deceased at around 6 p.m. in the evening on that day. In his cross-examination, his version remained unchallenged and this Court does not find his testimony to be unreliable as he is a natural witness, keeping in view his presence in the village and his natural manner of interacting with the appellant and the deceased, when they were seen together. Therefore, it can be safely concluded that as far as the appellant is concerned, he was very much present at Sheetal khera on that fateful day of 09.03.2015 and the deceased was also present in Sheetal khera and there were no other person present at the parental home of the deceased on that day, as it has also come in the evidence of PW-2 and PW-9, that the father and elder brother of the deceased were working at Surat and her younger brother (PW-9) had gone for a marriage at adjoining village Lokhariya and did not return to his home on that night.

17. No doubt, discrepancies or inconsistencies in prosecution evidence is a short fall from which no criminal case is free. However, this court cannot be oblivious to the fact that while considering the deposition of a witness, this Court has to take into consideration the process in which the facts are perceived and testified by a witness. Time and again, it has been held in a *catena* of judgments that when an incident occurs, a witness perceives facts according to his intelligence and experience in life and subsequently when he or she is called upon to recollect those facts, after a long gap of time, his or her memory may help or deter him/her in recollection of those facts and he/she may flounder on the precise time, place and sequence of events. This human process brings discrepancy in the deposition of a witness, which may be termed as normal. The testimony of PW-4 as far as the timing relating to having seen the deceased and the appellant together on the fateful day at 6 PM in the evening is an outcome of such a discrepancy. However, when this discrepancy is

weighed and marshalled along with other evidence, which has come on record, it can be safely deduced that both the deceased and the appellant were last seen together on the said fateful day. Further, it cannot be discounted that this kind of discrepancies in time, especially in a village, may occur on account of errors of observation of facts, normal errors of memory due to lapse of time or mental disposition of a witness. These discrepancies are those which are normal and expected of a normal person and cannot be termed as any material discrepancies, which may affect the substratum of the story itself. When the discrepancies, highlighted by the learned Counsel for the appellant are being considered, whether it is relating to the time when PW-4 last saw both the deceased and the appellant together on a motor-cycle or the time-line given by these witness, this court is of the opinion that these are normal and not material discrepancies. Thus, it is concluded that the inconsistencies in the prosecution case, as far as the presence of the appellant during the course of day on the date of incident on 09.03.2015 is immaterial and do not have any impact on the facts, deposed by the witnesses. Thus, the presence of the appellant at Sheetal Kheda on 09.03.2015 stands proved by a co-joint reading of the evidence of PW-2, PW-3 and PW-4 and even the last seen together evidence of PW-4 could not be impeached by the defense, although the said witness was subjected to intense cross-examination.

18. As far as motive is concerned, the testimony of the fact witnesses PW-2, PW-3, PW-4 and PW-9 have consistently stated that there was an ensuing love affair of the appellant. However, it has been argued by the learned Counsel for the appellant that motive could not be proved, as all the witnesses have merely given a hearsay account of the said love affair and in the absence of any motive, the appellant cannot be assigned the culpability of the offence charged against him. This Court is conscious of the fact that motive plays a relevant factor in all criminal cases, whether based on ocular witnesses or circumstantial evidence, however the question would always remain

as to whether inability to prove motive would be fatal to the prosecution case. No doubt, if the prosecution proves the existence of a motive it would definitely strengthen the said case, particularly in a case based on circumstantial evidence as in that case 'motive' would be counted as one of the link to the chain of events forming a part of the circumstantial evidence. However, in the same breath, it has also to be understood that generally it is a difficult task for any prosecution to bring on record what was in the mind of the accused, especially when, even if the Investigating officer would had been succeeded in extracting such evidence through interrogation, the law bars any such statement to be used as evidence in view of Section 25 and Section 26 of the Indian Evidence Act. Like, in the present case, although, it has come in evidence of PW-7(Investigating Officer) that the appellant has himself disclosed about the motive of committing the crime and her love affair with one Sardarni - "Guddi" of Nainital to be the motive behind the crime, however the same being barred under law, cannot be construed as an evidence on record. Thus, this Court has to see as to whether there is any other evidence, which points towards the motive of the appellant or not, dehors that proof of motive is not fatal to a prosecution story.

19. As far as the proving of motive is concerned, the law is no longer *res integra* that while proof of motive certainly strengthens the prosecution case based on circumstantial evidence, failure to prove the same cannot be fatal. In this regard, this court may refer to the judgment of the Hon'ble Supreme Court in the case of ***G. Parshwanath vs. State of Karnataka 2010 (8) SCC 593*** in which, it has been held as follows:

> ***"****45. The argument that in absence of motive on the part of the appellant to kill the deceased benefit of reasonable doubt should be given, cannot be accepted. First of all every suspicion is not a doubt. Only reasonable doubt gives benefit to the accused and not the doubt of a vacillating judge. Very often a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case when the motive alleged against accused is fully established, it provides foundational material to connect the chain of*

> *circumstances. It affords a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 I.P.C. Effect of absence of motive would depend on the facts of each case. Therefore, this Court proposes to examine the question of motive which prompted the appellant to commit the crime in question."*
>
> *(Emphasis Supplied)*

20. Coming back to the facts of the present case, as already stated herein above, the present case as being founded on circumstantial evidence by its very nature depends on the inference one draws from the existence of fact based on certain established fact/circumstances. This Court cannot be oblivious to the fact that these inference, which is sought to be drawn, may not always lead to absolute certainty as whether it is the trial Court or this Court, we all are dealing with human standard behavior and reconstructing a past incident in hindsight. Therefore, it is quite obvious that while evaluating the proven circumstances for drawing inferences therefrom, a logical, rational and pragmatic approach must be adopted without being too technical, pedantic, or seeking absolute proof, for this principle of circumstantial evidence is not based on statutory provisions.

21. Moreover, it has to be well understood that in a case based on circumstantial evidence, the law does not require that a fact is required to be proved on absolute terms bereft of all doubts, rather what the law contemplates is that for a fact to be considered proven, it must eliminate any reasonable doubt, which primarily should be based on reason and common sense evolving out of the evidence in the case. In other words, each of the circumstances from which certain inferences are sought to be drawn, is required to be proved in accordance with law, and there cannot be any element of surmise and

conjecture, and each of these circumstances so proved must form a complete chain without any break to clearly point to the guilt of the accused person. The Court has to examine the cumulative effect of the existence of these circumstances, which would point towards the guilt of the accused, though any single circumstance may not in itself be sufficient to prove the offence. Thus, although, in the given facts and from the evidence of PW-7, who has proved the CDR (Exhibit- Ka15), that the appellant was in continuous touch with the said "Guddi" of Nainital on the said fateful day, but nothing has come on record to show that the said "Guddi" actually existed. Neither she had been made an accused in the present case, nor any effort has been made by the Investigating Officer to record her statement. Thus, it cannot be concluded with certainty that the appellant had any love affair with the said "Guddi". However, having affair with "Guddi" held as not proved, does not as a corollary mean that there does not exist any motive.

22. It has to be understood that whether it is PW-2 or PW-3 or PW-4 or PW-9, all have consistently stated that the appellant was present in Sheetal Kheda on that fateful day and had an illicit relation with some lady at Nainital, wherein he used to work. PW-4 has supported the last seen together theory of the prosecution. The statement of PW-7 and the CDR have been proved to show that the appellant was present in the vicinity on that fateful day-night. It has also come in evidence that the appellant and the deceased were called upon to Sheetal kheda to look after the house of the mother of the deceased/PW-2, as she and her son/PW-9 had to attend a marriage on the said night. No doubt, the motive could not be substantially proved by the prosecution, however, there is always a presumption that the husband is custodian of the wife. He is the protector and is required to maintain his wife properly and with huge degree of dignity. Therefore, it is the appellant-husband, who owes a responsibility and an explanation as to in what circumstances the dead body of his Wife-Anita could be found in the nearby village.

23. Although, the appellant in his statement recorded under Section 313 Cr.P.C, has not only refused to have committed the said crime, but has sought to explain his stand by alleging that the deceased had certain illicit affair with a villager, whom again he does not name and the crime was allegedly committed by the said villager. Neither any name nor any defence, nor any explanation as to how that so called villager entered the picture nor any defence as to what did he do after having last seen together with the deceased has been brought on record.

24. No doubt, it is true that even in cases based on circumstantial evidence, the prosecution cannot depend on the false *alibi* or unproven defence plea since the onus is always on the prosecution to prove the prosecution case and the onus never shifts to the accused. However, in such circumstances where prosecution has been able to prove on the basis of cogent evidence the presence of the accused at the crime scene, as in the present case, it was incumbent upon the appellant to explain the circumstances of his presence or his non-presence or atleast an explanation, as to what happened after he was seen at his in-laws's village or he left his in-law's village. The appellant apart from claiming ignorance and denying the various incriminating evidence presented during the trial, chose not to adduce any evidence to explain these circumstances. Thus, his silence and failure to explain any of the incriminatory circumstances, would strengthen the prosecution case based on circumstantial evidence against him as proved by the prosecution and according to this Court becomes an additional link in the chain of circumstances. In this regard, we may profitably refer to the judgment of the Hon'ble Supreme Court rendered in ***Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681,*** wherein it was held that where circumstantial evidence is the sole basis for any case, and when the incriminating circumstances are put to the accused, if the accused does offer any explanation or the explanation given is found

to be false, it provides an additional link to the chain of circumstances as observed in *para 21* of the aforesaid decision, which is reproduced herein below: -

> ***"****21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of T.N. v. Rajendran [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] (SCC para 6); State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] (SCC para 39 : AIR para 40); State of Maharashtra v. Suresh [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] (SCC para 27); Ganesh Lal v. State of Rajasthan [(2002) 1 SCC 731 : 2002 SCC (Cri) 247] (SCC para 15) and Gulab Chand v. State of M.P. [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] (SCC para 4).]****"***

25. The Hon'ble Supreme Court recently in the judgment delivered on May 30, 2025 in the case of ***Chetan Vs State of Karnataka, Criminal Appeal No. 1568/2013*** held that:-

> ***"****10.16 We may not also lose sight of the significance of the provision of Section 313 of the CrPC in the case. As a trial comes to a conclusive phase and all the evidence are adduced by the prosecution, the veracity and credibility of which are tested with the tool of cross examination and when a certain clear picture emerges based on the incriminating materials on evidence, as a procedural safeguard, the court draws the attention of the accused to these incriminating evidence to enable the accused to explain these facts and circumstances which point to his guilt. While the accused is not obligated to answer the questions put to him and still can maintain his silence or deny the evidence, yet silence or evasive or wrong answers to the questions put by the court provides a perspective to the court in properly evaluating the incriminating materials which have been brought forth by the prosecution by drawing necessary inference including an adverse one. [See, Manu Sao v. State of Bihar, (2010) 12 SCC 310].*
>
> *10.16.1 Examination of an accused under Section 313 CrPC is an important component of the process of judicial scrutiny of the evidence sought to be relied upon by the prosecution against an accused. At the time of indictment and framing of charges against an accused, the untested evidence marshalled by the investigating authority in the course of the investigation is laid bare before the accused, who would have an idea as to the nature of evidence and*

case being built up against him by the prosecution. This is to enable the accused to prepare and strategize his defence. He will have all the opportunities to discredit any prosecution witness or question any evidence through the tool of cross examination. He will thereafter have the opportunity to lead his defence evidence if any. It is in this context that the answers given by an accused assume great significance in assessing the evidence by the court."

26. Moreover, the present case can be viewed from a different perspective. Admittedly, it has come in evidence that the appellant came to be arrested on 15.03.2015 at around 5.45 p.m. and one Intex mobile phone was recovered from him. After this recovery, it has been stated by PW-7 (Investigating Officer) that C.D.R. of his mobile no.8445283662 was obtained and it has been stated in his examination-in-chief that the said phone was kept under surveillance after obtaining a detailed report, which has been exhibited as 5-Ka/12 and 5-Ka/13. After analyzing the detailed report of C.D.R. it has come in evidence that the appellant was at village Murtazanagar at 19 hours, 20 minutes and 22 seconds and was in continuous touch with the person having mobile no. 9058051313 which was found to be of one Sardarni named 'Guddi'. This Court has examined the C.D.R. on record at length and has noted that the appellant had been in continuous touch with the said mobile phone on the said fateful day in as much as there were 5 calls made on the said number, on that particular day, wherein the calls duration were between 116 seconds to 1538 seconds. The said witness has specifically stated that the mobile location of the appellant was found near about the place of incident on that particular day. The said witness has stated that it was the appellant who has stated that he is entangled with love affair with one Sardarni named 'Guddi', whose husband has died and her mobile number is 9058051313 and he used to often talk to her and it was for that reason that there was dispute between the deceased and the appellant. The said witness has also recovered broken bangles from the place of incident which points out towards some kind of scuffles between the deceased and the assailants, as

some bangles had been broken but some bangles were intact in the hands of the deceased.

27. Further, this Court finds that when evidence of the witnesses examined was appreciated threadbare, there existed neither any inherently improbable nor do have any inconsistent or mutually contradictory passages therein. Not to talk of inimical relations as to why the witness would depose against the appellant, not even a whisper of fact was made by the appellant, during the course of their cross-examination, that there was any such circumstance which made them to have feeling of animosity with the appellant. Neither their character was impeached nor receipt of any corrupt inducement by them to give evidence was imputed. Their demeanor, while under examination, was not found to be abnormal or unsatisfactory. We could not find even a single strand to opine that the witnesses, examined in the case, were unworthy of credence. Thus, we find that apparently, a foundational fact was built by the prosecution, which are founded on sound evidence, in as much as a chain of events have been woven, which points towards the culpability of the appellant. Further, even the subsequent conduct of the appellant, gives a further strengthening to the chain of circumstances, in as much as it has come in the evidence that the appellant was arrested on 15.03.2015 at 5.45 p.m. in the evening, *i.e.* after five days of the body of the deceased was found and that too upon pointing out by an informer. Thus, subsequent conduct of the appellant and no explanation from his end also raises a doubt in terms of Section 8 of the Indian Evidence Act. Thus, this Court finds that objectively, the chain of circumstances against the appellant can be enumerated in the following manner:

Homicidal death – *established by medical evidence.*

Last seen together – *Deceased was last seen together with the appellant shortly before death.*

Recovery and C.D.R. – *connect accused to place of death and time.*

Absconding and false denial – *strengthen inference of guilt.*

28. Ergo, this Court finds that, in view of above, apparently, a foundational fact was built successfully by the prosecution and thus, a duty was cast upon the appellant to show and explain the evidence which has been brought against him. As aforesaid, the entire evidence was put-across the statements of the appellant under Section 313 Cr.P.C. and when it was specifically asked as to why this case has been filed against him, he simply replied that it was a false case due to vengeance. This Court finds that although a defence story had been narrated by the appellant pointing towards some illicit relationship of the deceased with a co-villager, but no evidence has been led by him to either name or bring any iota of evidence in that regard, although opportunity of defence was granted to him by the learned trial Court. The appellant has merely denied or feigned ignorance to which necessary inference can be drawn against him. The Hon'ble Supreme Court in ***Ram Gopal S/o Mansharam v/s State of Madhya Pradesh,*** after considering the judgment of the Apex Court in ***Rajendra Vs State of NCT of Delhi, (2019) 10 SCC 623*** and ***Satpal vs State of Haryana, (2018) 6 SCC 610*** has held as follows:

> ***"9.*** *In view of the afore-stated legal position, it is discernible that though the last seen theory as propounded by the prosecution in a case based on circumstantial evidence may be a weak kind of evidence by itself to base conviction solely on such theory, when the said theory is proved coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused does owe an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death might have taken place. If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established and some other corroborative evidence in the form of recovery of weapon etc. forming a chain of circumstances is established, the conviction could be based on such evidence."*

29. It may be noted that once the theory of "last seen together" was established by the prosecution, the appellant was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased. It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Indian Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the accused, nonetheless it is also equally settled legal position, that if the accused does not throw any light upon the facts which are proved to be within his special knowledge, in view of Section 106 of the Evidence Act, such failure on the part of the accused may be used against the accused, as it may provide an additional link in the chain of circumstances required to be proved against him. In the case based on circumstantial evidence, furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as propounded by the prosecution was proved against him.

30. So far as the facts in the instant case are concerned, it was duly proved that the death of the deceased was homicidal. It has also been proved that the deceased was last seen together with the appellant, who was her husband. It is the appellant, who had taken the deceased along with him in the evening and the very next day early morning, the dead body of the deceased was found lying in the close vicinity, from where she was last seen together along with the appellant. The appellant, being the husband of the deceased, is presumed to be the protector of his wife and as such the threshold of explanation and responsibility is on a higher pedestal than a normal person. Further, the time gap between the period when the deceased was last seen together with the appellant and the recovery of the corpse of the deceased being quite proximate, the non-explanation of the appellant with regard to the circumstance under which and when

the appellant had departed from the company of the deceased is a very crucial circumstance proved against him. Having regard to the oral evidence of the witnesses, the motive for such a crime had also surfaced, although it remained inconclusive to some extent and which this Court finds to be not fatal to the prosecution story, in the wake of other corroborative evidence against the appellant. The corroborative evidence with regard to the C.D.R., broken bangles and the Inquest report showing the status of the body, also substantiated the case of prosecution.

31. Thus, looking from any angle, the circumstantial evidence brought on the record, adheres to the five golden principles, as enunciated by the Supreme Court in the case of ***Sharad Birdhi Chand Sarda vs State Of Maharashtra (Supra).*** The prosecution has successfully established the guilt of the appellant for causing murder of his wife Anita Pal, beyond a reasonable doubt. The possibility of any other person being responsible for the death being ruled out, it can be safely said that the Prosecution has been able to prove the charges against the appellant. This Court has further noticed that the appellant did not participate in the '*panchayatnama*' also, which shows the conduct of the appellant post-crime is under suspicion and a relevant fact under Section 8 of The Indian Evidence Act; Further, there has been no explanation as to why despite the prolonged absence of his wife, the appellant did not make any substantive effort to ascertain her whereabouts, nor filed any complaint which reflects a lack of due diligence on his part, considering the pious duty inherent in a marital relationship.

32. Ergo, due to the foregoing reasons, we are of the view that no material illegality has been committed by the learned Trial Court in appreciating the evidence against the appellant, nor it can be said that any gross injustice has been caused to the appellant by the

impugned judgment by misreading or ignoring any material evidence.

33. We are, therefore, satisfied that the conviction of the appellant by the Trial Court does not warrant any interference from this Court and as such sustain the conviction and sentence of the appellant under Section 302 of the Indian Penal Code, with regard to the murder of his wife, Anita Pal.

34. Resultantly, the appeal is ***dismissed*** and the impugned judgment and order dated 25.08.2017, passed by the learned Trial Court in Sessions Trial No. 205 of 2015, arising out of Case Crime no. 124 of 2015, is upheld. Consequently, the appellant shall undergo the sentence awarded to him.

(Abdhesh Kumar Chaudhary,J.) (Rajesh Singh Chauhan,J.)

November 27, 2025
MVS/-

Digitally signed by :-
MANOJ VIKRAM SINGH CHAUHAN
High Court of Judicature at Allahabad,
Lucknow Bench