

Court no.46

Reserved on:31.01.2022
Delivered on:04.04.2022

Case :- CRIMINAL APPEAL No. - 2448 of 2009

Appellant :- Ram Shanker And Another

Respondent :- State of U.P.

Counsel for Appellant :- Apul Misra, Jitendra Kumar Mishra, Narendra Kumar Singh, Ravesh Kumar Singh, S.S. Rathore, V.K. Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Subhash Chandra Sharma, J.

1. Heard Sri Jitendra Kumar Mishra learned counsel for the appellants and Sri Roopak Chaubey learned A.G.A. for the State-respondents.
2. This appeal is directed against the judgment and order dated 15.04.2009 passed by the Sessions Judge, Kannauj in Sessions Trial no.332 of 2002 arising out of Case Crime no.528 of 1990 under Section 302 I.P.C. Police Station and District Kannauj, whereby the accused Ram Shanker and Munni Devi have been convicted for life and fine of Rs.5000/- each. The default punishment is three months additional rigorous imprisonment.
3. At the outset, it may be noted that the present appeal has been filed by both the accused persons namely Ram Shanker and Munni Devi. The appellant Munni Devi had died during the pendency of the appeal and this appeal has been abated on her behalf vide order dated 16.12.2021. The appreciation of evidence, therefore, has to be made by us only with regard to the appellant Ram Shanker.
4. The prosecution case begins with an application dated 06.08.1990 given to the Superintendent of Police, Kannauj by Ayodhya Prasad Yadav s/o Jiya lal Yadav who happens to be the brother of deceased Geeta Devi. As per the said report, the accused Ram Shanker alongwith the wife of Ram Gopal and one Radhey lal had committed murder of deceased Smt Geeta Devi and her three children by pouring kerosene on them and burning them to death. The appellant Ram Shanker is husband of

deceased Geeta Devi and father of three children who had died in this ghastly incident. As per the statement in the written report, deceased Geeta Devi was married to Ram Shanker s/o Mani Lal who was a man of bad character and bad habits. The first informant came to know about the bad behaviour of the appellant Ram Shanker through the letters written by the deceased Geeta Devi. On receipt of the information from his sister, the first informant also tried to pacify his brother-in-law who was having illicit relationship with the wife of his brother Ram Gopal. The relationship between the appellant and his wife Geeta Devi got strained because of that fact and Ram Shanker used to beat his wife for that reason. On 24.07.1990, Ram Shanker alongwith two other accused persons named above had committed murder of Geeta Devi and his three children.

5. The information about the incident was received by another brother of deceased namely Chhote Lal Yadav who reached the spot and gave application on 2.8.1990 giving an intimation of the incident but no action was taken thereon by the police. The prayer had, thus, been made in the application given to the Superintendent of Police that direction be given to lodge the report and carry out necessary proceedings. Along with the said application, photocopies of the inland letters were appended. Under the directions of the Senior Superintendent of Police, the first information report was lodged on 6.8.1990 at about 18.35 hours in the Police Station-Kannauj Sub-District-Kannauj District-Farrukhabad. The chik report and G.D entry of the same have been proved by P.W-5, Head Moharir of the police station concerned. In the examination-in-chief, P-W-5 proved that the FIR was lodged pursuant to the order of the S.H.O, (Station House Officer) under the direction of the Senior Superintendent of Police. The chik F.I.R and G.D entry are exhibited as Exhibit-Ka-'20' and Ka-'21'. He has also proved that the photocopies of two inland letters which were given by the first informant along with the application have also been entered in the G.D.

6. The record further indicates that the inquest of the body was conducted by P.W-4, the sub-Inspector posted in the Police Station-Kannauj on 25.07.1990 in the hospital namely Vinod Dixit Hospital. The report of death was received in the police station from the hospital through a sweeper Ram Naresh posted there. The inquest of deceased Geeta Devi was conducted around 6.30 a.m and after preparation of necessary papers, dead body was sealed and sent for the post mortem. The inquest of deceased Ruchi was made at 8.35 a.m. The inquest on the dead body of deceased Ashish and Chhote Bhayiya @ Pappu was made at about 10.00 and 11.00 a.m; respectively. P.W-4 had proved all the papers of inquest and related documents as Exhibit-Ka-'5' to Exhibit-Ka-'19' and that he sealed the dead bodies and sent them for the post mortem through constables Suresh Chand and Bhup Singh. The post mortem of the bodies was conducted on 26.7.1990 and the cause of death reported by the doctor was shock and suffocation as a result of ante mortem burnt injuries. The ante mortem injuries as described in the post mortem report were burnt injuries of grade first to third degree all over the body of each deceased. P.W-6, the post-mortem doctor had given proximate time of death about one and half days. On external examination of the bodies, he reported that the smell of kerosene was present. On internal examination, semi digested food was found in the small intestine of the deceased Chhote bhayiya @ Pappu, Smt Geeta Devi, Ruchi and deceased Ashish. The doctor has stated that the deceased persons might have taken food within four hours of the incident.

7. It has come up on the record that all four persons were taken to the hospital namely Vinod Dixit Hospital. P.W-8 is the ex-medical Superintendent of the aforesaid hospital who has proved that he was posted in the emergency duty of the hospital at 4.00 a.m when all four persons were brought to the hospital in burnt state and they were brought by Ram Gopal, Ram Sudhar, Raja Ram, Ram Kumar Dulai and Ram Shanker. Out of four injured, two namely Chhote Bhayiya and Ruchi were

brought dead and the entries of all the patients are there in the emergency service book. The remaining two were given medical aid. The deceased Ashish had received 80% burnt injuries and his condition was critical. He was gasping and unconcious. He had died at about 4.30 a.m. The medicines prescribed to deceased Ashish in the hospital has been proved as Exhibit Ka-'33'. The deceased Geeta was burnt to the extent of 90%. Her general condition was critical. She was restless and her pulse was 98 per minute. The prescriptions giving details of the condition of the patient and medicines prescribed to her had been proved as Exhibit Ka-'34'. The deceased Geeta Devi had died at 4.55 a.m. In cross, P.W-8 proved that the information of death of the patients was sent to the police station concerned through the ward boy and the memo of the same bears his signature. He further stated that an intimation to record the statement of deceased prior to their death was sent to the police station as paper no.27a/2 which also bears signature of Ram Gopal. The emergency book contained signatures of all persons who brought the deceased to the hospital.

8. P.W-7 is ex-Inspector CBCID Kanpur Zone who has proved that the investigation of the case was initially handed over to Sri Kailash Chand sub-Inspector, CBCID under the directions of the Superintendent of Police, Women Help Cell, CBCID. The order of the concerned police officer had been proved as Exhibit Ka-'26'. Later on, the case was transferred to him by the order of the Superintendent of Police which is Exhibit-Ka-'27'. He commenced investigation on 8.2.1994. During the investigation, he recorded statements of the prosecution witnesses and entered two inland letters in the CD. The site plan of the place of the incident was proved as Exhibit Ka-'29' being in his writing and signature. The chargesheet was submitted by him under Sections 498A, 306, 504, 506 I.P.C against the accused Radhey lal and Ram Shanker which is Exhibit Ka-'30.' Another supplementary chargesheet against Smt. Munni Devi w/o Ram Gopal submitted by him being in his writing and signature

has been exhibited as Exhibit Ka-'31'. In cross, this witness has proved that the final report submitted by the previous Investigating Officer of the local police was seen by him. P.W-7 further stated that he recorded statement of the first informant on 4.4.1996 and other prosecution witness on 15.11.1994 at their places of residence. About the place of incident, in cross, this witness has stated that the houses of three brothers were connected to each other though their exit were separate. However, three houses were interconnected. He denied the suggestion that he did not witness the house from inside or they were not interconnected. The suggestion regarding discrepancy in the site plan had been denied categorically.

9. On submission of the chargesheet, after committal charges were framed against three accused Ram Shanker, Radhey Lal and Munni Devi under Section 302 I.P.C vide order dated 6.4.2005 by the trial Court.

The formal witnesses, thus, proved the proceedings conducted by them and the documentary evidence prepared by them on record.

10. The witnesses of fact, three in number, are Ayodhya Prasad Yadav (P.W-1), Amar Singh Yadav (P.W-2) and Chhote Lal Yadav (P.W-3) who happen to be brothers of deceased Geeta Devi. Amongst them, P.W-1 had given the report of the incident to the Senior Superintendent Police, Kannauj upon which the F.I.R was lodged in the police station concerned.

11. In the examination in chief, P.W-1 Ayodhya Prasad Yadav stated that deceased Geeta Devi was his elder sister who was married to the appellant Ram Shanker. Three children were born out of the wedlock whose names were Ruchi, Ashish and Chhote Bhayiya. At the time of marriage, there was no complaint about the character of the appellant Ram Shanker. However, with the passage of time, he had indulged in bad habits and whenever deceased Geeta Devi used to come home she would tell them that her husband Ram Shanker had illicit relationship with Munni Devi, wife of his younger brother Ram Gopal. On account of their relationship, the appellant Ram Shanker used to beat his wife and that the

deceased was reeling under fear of her death which was intimated to him through the letters. On 24.7.1990, a telegram was received in the house of his parents that Geeta Devi and her four children had been burnt to death by three accused. At that time, P.W-1 was on duty at Karena. On receipt of the telegram, his younger brother Chhote Lal had reached the matrimonial house of Geeta Devi and contacted the local police but report was not lodged. Upon information, the P.W-1 came to Kannauj, gave application to the Senior Superintendent of Police and the report was then lodged at the concerned police station. The application paper no.'17A' was proved by this witness with its contents and his signature upon it as Exhibit Ka-'1'. The original copies of two inland letters which were appended with the said application were produced in the Court during trial. The original copy of one more letter which was given by P.W-1 to the Investigating Officer was also filed in the Court on the date of his deposition. P.W-1 had proved three inland letters paper nos.17A, 18A and 19A being in the handwriting of deceased Geeta Devi and her signature on one of them, i.e paper no.18A was also proved. These three letters were exhibited as Exhibit Ka-2, Exhibit-Ka-3 and Ka-4. Two of the said letters namely Exhibit Ka-2 and Ka-3 were sent to the P.W-1 by deceased Geeta Devi on his postal address whereas third letter paper no.19A Exhibit Ka-4 was sent to Chhote Lal (P.W-3) at his place at Gurdaspur, Punjab. In these three letters in the column of sender, name of Ruchi has been mentioned.

12. The reason for murder of four persons disclosed by P.W-1 was illicit relationship of Ram Shanker with Munni Devi. On confrontation in the cross examination he had stated that he did not initiate any action even knowing all those facts as his sister had three children and it was a dispute between husband and wife and he thought that it would be settled with the passage of time, but such an incident was beyond his imagination. The intimation of the incident was given to him by his nephew who reached at the place of his posting. The house of three brothers including Ram Shanker were in three parts. The house of Ram Gopal was adjacent to the

house of Ram Shanker. P.W-1 stated that he had never gone to meet Munni Devi or her husband Ram Gopal, however, on the asking of the Court, he stated that he had tried to reason out his brother-in-law two or three times. He had denied suggestion of the handwriting of two documents Exhibit Ka-'2' and Ka-'3' being different and that Exhibit Ka-'4' does not bear the signature of his sister. P.W-1 stated that on receipt of the information, he did not go to the house of appellant Ram Shanker nor he met him. From Kannauj, he went to Kanpur at the place of his maternal uncle and then to the Superintendent of Police along with his cousin Jagannath. He had denied the suggestion of deceased Geeta Devi having committed suicide alongwith her three children due to poverty and that she poured kerosene on herself and her children. He categorically denied that his brother-in-law, the appellant Ram Shanker was a poor person and he did not have sufficient means to take care of his wife and three children and on account of that fact his sister Smt Geeta Devi had committed suicide by pouring kerosene on herself and three children after locking them in a room.

13. P.W-2 is another brother of deceased Geeta Devi who stated that the appellant Ram Shanker was mistreating his sister and one day he even thrown her from the roof. The reason for that behaviour was that Ram Shanker was having illicit relationship with Munni Devi and his sister used to oppose them. The report regarding the incident was received by them through the telegram and his brother Chhote lal and Ayodhya Prasad went to the spot. The report was lodged by his brother Ayodhya Prasad and he came to the spot after ten days. P.W-2 is the eldest brother amongst all siblings and stated that her sister was married forty years back with appellant Ram Shanker. He stated that he was at home at the time of the incident and his brother Chhote lal took leave and came home after getting information. P.W-2 has denied the suggestion that deceased Geeta Devi had committed suicide due to poverty and also killed her children.

P.W-2 deposed that his sister did not send any letter to him and letters were written to Ayodhya Prasad Yadav and Chhote lal.

14. P.W-3 Chhote lal deposed that he got information of the incident through the telegram in Amritsar where he was posted and then he straightaway went to his house at Makrandnagar. After he gathered all the information regarding the incident, he went to the police station to lodge the report. No F.I.R was lodged nor any proceeding was conducted and then his brother Ayodhya Prasad went to the Superintendent of Police, Kannauj. P.W-3 stated that his brother-in-law Ram Shanker was having illicit relationship with Munni Devi, wife of Ram Gopal. His sister (Geeta Devi) used to oppose the appellant Ram Shanker and he used to beat her. In the year 1989, his sister Geeta Devi wrote letters which are exhibited as Exhibit Ka-'2', Ka-'3' and Ka-'4'. On a question by the Court, P.W-3 stated that after he got the letter of his sister he came to Kannauj and then he came to know that appellant Ram Shanker used to beat his sister as he was having illicit relationship with Munni Devi to which deceased Geeta Devi opposed. On a cross by the defence counsel, P.W-3 stated that he did not know about the illicit relationship of appellant prior to the year 1989. The appellant Ram Shanker has three brothers who were living in one house in different rooms and denied that their houses were separate. P.W-3 stated that when he came to know about the illicit relationship of appellant he did not tell anything to his relatives, rather he told his elder sister Somwati and brother-in-law but they did not come to the house of Geeta Devi. On confrontation, he stated that the financial condition of appellant Ram Shanker was good. After ten days of the incident he went to the house of his sister and met his brother in-law Ram Shanker and his other brothers. He stated that his sister wrote two letters to him which he had given to his brother and they had been filed in the Court. On a suggestion given to P.W-3 that the letters were not of deceased Geeta Devi he stated that in the column of sender, the deceased wrote the name of her daughter Ruchi out of shame. He had denied the suggestion that the letters

were in different handwritings. He had categorically denied the suggestion that his sister had committed suicide due to poverty.

15. Inland letters exhibited as Exhibit-Ka-'2', Exhibit-Ka-'3' and Exhibit Ka-'4' were, thus, proved being in the handwriting and signatures of deceased Geeta Devi who wrote to his brothers raising an apprehension that she might be killed by two accused persons namely Ram Shanker and Munni Devi. The contents of the letter have been noted by the trial court, crux of which is that because of the illicit relationship of Ram Shanker with Munni Devi, the deceased Geeta Devi had perceived threat to her life.

16. After completion of the prosecution evidence, the statement under Section 313 Cr.P.C of the accused Ram Shanker was recorded wherein he had taken a plea of alibi by stating that he was implicated due to enmity and on the fateful night he was in an Ashram which was one km away from his house and further that he had admitted Geeta Devi in the hospital. The appellant had denied the question saying it was wrong that he had illicit relationship with Munni Devi w/o his brother Ram Gopal and because of that fact his relationship with his wife got strained.

17. Learned counsel for the appellant argued that the First Information Report had been lodged with an inordinate unexplained delay of fourteen days. It is not understandable nor acceptable that the real brothers of deceased Geeta Devi would not come to her house after getting information of death of their sister and three children. Each of the family members knew that it was a case of suicide and after about fourteen days, in order to falsely implicate the appellant Ram Shanker, they had lodged the First Information Report alleging murder caused by him as an after thought. There are contradictions in the statement of the prosecution witnesses with regard to the manner in which information of the incident was received by them and no one could explain as to why they did not reach immediately to the house of deceased Geeta Devi. He then stated that the appellant himself alongwith his brothers had admitted deceased

Geeta Devi and his three children in the hospital. Para-'14' at page-'7' of the judgment of the trial court has been placed before us to submit that the police officer who was the first Investigating Officer had mentioned in the case diary that deceased Geeta Devi and her three children were taken out of the room wherein they had slept, after breaking open the door. Many people had reached at the place after hearing cries of deceased Geeta Devi who had committed suicide by pouring kerosene on herself and her three children hugged her while she was burning and they also caught fire and burnt to death. Noticing the above facts, the first Investigating Officer had submitted a final report. But on the pressure exerted by the prosecution witnesses, brothers of the deceased, investigation was handed over to CBCID and on assumptions and surmises, chargesheet was filed. He then submitted that the trial court has committed error in convicting the appellant under Section 302 I.P.C when the chargesheet was filed under Section 498 A and 306 I.P.C. Learned counsel for the appellant further contended that the letters allegedly written by Geeta Devi Exhibit Ka-2, Ka-3 & Ka-4 which were relied by the trial Court were not put to the appellant Ram Shanker while recording his statement under Section 313 Cr.P.C. The requirement of Section 313 Cr.P.C is that all the incriminating circumstances were to be put to the accused so as to give him opportunity to present his defence. This requirements is in line of the principle of natural justice. The adverse material which was not put to the accused/appellant herein cannot be taken as evidence against him. The trial court has, thus, committed a serious error of law in relying upon three letters exhibited as Exhibit Ka-'2', Ka-'3' and Ka-'4' as the evidence admissible under Section 32(1) of the Indian Evidence Act.

18. Having noticed the above submissions, we may record at the outset, that the plea of alibi though taken by the appellant Ram Shanker in his statement under Section 313 Cr.P.C, but no evidence was adduced by the defence to prove that the appellant Ram Shanker was not present in the house on the date of the incident. The bald plea without any supporting

evidence is not acceptable. From the site plan, and the statement of the prosecution witnesses it is evident that the room in which four persons were burnt to death was located in the outer portion of the house in question and behind that room, there was an Aangan of Ram Shanker and a Varanda and one more room. The entire house was divided in three portions vertically and each portions has one room. Aangan, varanda and another room, occupied by three brothers namely Ram Shanker, Ram Sudhar and Ram Gopal. Each portion was having a separate entrance opening on a Chabutra. Three rooms located at the front in occupation of three brothers were adjacent to each other. On the western side of the house, there were three shops and one room, entrance of which was also opening on a Chabutra. It is, thus, evident that four deceased namely Geeta Devi and her three children had died in the house of which appellant Ram Shanker was a normal resident. This is a case of circumstantial evidence as no one has come forward to narrate as to what had happened on the fateful day or that he had seen the incident. The other occupants of the house, the family members of appellant Ram Shanker are silent. The appellant Ram Shanker, husband of the deceased Geeta Devi had taken plea of alibi which he could not prove.

19. The record though indicates that the deceased persons were taken to the hospital by the appellant Ram Shanker along with his brothers but information of their death was sent to the police by the doctor. The appellant Ram Shanker did not report suicide by his wife and homicidal death of his three children in his house. The suggestion of the defence of suicide committed by Geeta Devi and killing her three children due to poor economic condition of the family is, thus, unacceptable. There is no positive evidence to accept this hypothesis.

20. As regards the relationship of deceased Geeta Devi with her husband Ram Shanker, three witnesses had categorically deposed that the cause of their strained relationship was illicit relations of appellant-Ram Shanker with his brother's wife Munni Devi. As a proof of same, these

letters in the shape of Ka-'2', Ka-'3' and Ka-'4', were proved to be in handwriting of deceased Geeta Devi P.W-1 was though confronted on the handwriting of the Exhibit Ka-'2' and Ka-'3', but no question was put to him on Exhibit Ka-'4'. We find substance in the submission of the learned counsel for the appellant that since three letters exhibited as Exhibit-Ka-'2', Ka-'3' and Ka-'4' were not put to the appellant Ram Shanker during his examination under Section 313 Cr.P.C., they cannot be treated as dying declaration of deceased Geeta Devi under Section 32(1) of the Code of Criminal Procedure, i.e the statement about the cause of death of Geeta Devi. However, at least it can be opined from these papers, which were proved by filing their original copies in the Court, that the relations of husband and wife namely appellant Ram Shanker and deceased Geeta Devi were sour for the reasons disclosed therein.

21. Once the prosecution had proved the homicidal death occurred in the house of appellant Ram Shanker, the initial burden of proving the unnatural death by pouring kerosene had been discharged by the prosecution. The onus, thus, shifted on the accused Ram Shanker who was the normal residence of the house wherein deceased persons were normally residing with him to explain the facts within his special knowledge, i.e as to what had actually happened in his house on the fateful night and in what manner his wife and three children were burnt to death. Any wrong explanation or silence of the accused to the above incriminating circumstance would lead to the belief that the accused is guilty, inasmuch as, adverse inference has to be drawn in such a circumstance. In an incident which occurred within the four walls of the house, the burden to explain the circumstance leading to death is upon the inmates of the house.

22. In this case, the appellant Ram Shanker took a plea of alibi saying that he was present in an Ashram at the time of the incident, which was barely 1 km away from his house and that he brought the deceased to the hospital. No explanation is forthcoming as to who had informed him and

how and when he reached his house after getting the information. There is complete silence on the part of the appellant as to the time when he came to know about the incident. No evidence has been brought by the defence in support of the explanation offered by the accused.

23. As to the doctor's opinion, the death had occurred about 1 and a half day prior to the post mortem which was conducted on 26.7.1990 at about 1.30 p.m. Two of the deceased children, one Ruchi aged about twelve years and Chhote Bhayiya aged about one and a half year were brought dead to the hospital when they were admitted at around 4.00 a.m. It seems that the incident had occurred in the dead of the night and the deceased persons were brought to the hospital by the appellant with the help of other inmates of the house (his brothers) in order to save his skin to create a story of suicide by deceased Geeta Devi. No explanation is forthcoming as to why the appellant and other inmates of the house two brothers and their wives did not make any effort to save the four deceased. The presence of other inmates in the house, two brothers of appellant namely Ram Sudhar and Ram Gopal is proved by the fact that they alongwith the appellant Ram Shanker took the deceased to the hospital.

24. The statement in the index of the site plan as per observation of the Investigating Officer is that there was a small gap in the double doors of the room and when the door was shaken, a gap arose to put hands and the latch which was inside could be opened; he has further noticed a mark on the door of kulhari and a portion of wood was broken. The door had been found painted second time (दोबारा पेंट हो चुका है) As four deceased were burnt to death alive inside a room area of which was barely five paces (width) and seven paces (length), had this been a case of suicide, on the cries of those persons the other residents of house would have rushed to break open the door to take them out immediately before they had received 80-90% of burnt injury. The post-mortem report indicates that two deceased children who were brought dead to the hospital namely Ruchi and Chhote bhayiya and other two deceased who were admitted to the hospital

initially namely Geeta Devi and Ashish, had received Grade-I to III degree burn all over their body.

25. The silence of the appellant in explaining the incriminating circumstance in which his wife and three children were burnt to death in his house, is a reason to draw the presumption that the accused had murdered them. This silence on the part of the appellant Ram Shanker and the explanation offered by him which has been found to be untrue, is an additional link and complete the chain of circumstance put forth by the prosecution. The motive to cause death of his wife and three children under the influence of Munni Devi assigned to accused Ram Shanker has been proved by the prosecution witnesses.

26. Section 106 of the Evidence Act is an exception to Section 101 which lays down the general rule about the burden of proof being on the prosecution. It is settled that Section 106 is not intended to relieve the prosecution of its duty to prove the incriminating circumstance against the accused beyond reasonable doubt. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience (**Reference: *Shambhunath Mehra vs State of Ajmer***)¹.

27. When homicidal death occurred 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

1.(1956) AIR SC 404

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. (*Reference Trimukh Maroti Kirkan vs State of Maharashtra*²).

28. In *State of West Bengal vs Mir Mohd Omar and others*³, it was held that pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as fossilised doctrine as though it admits no process of intelligent reasoning.

29. The accused furnish no explanation or offers an explanation which is untrue then it can be treated as an additional link in the chain of circumstance against the accused to make it complete. (*Reference: (Sandeep vs State of U.P)*⁴).

(*Reference:Kallo @ Laxminarayan vs State of Madhya Pradesh*)⁵ .

30. For the above discussion, in view of the circumstances of the case brought forth by the prosecution, we find that the circumstances leading to death of four persons in the house of the appellant Ram Shanker in the dead of night in a dreadful manner had been proved by the prosecution. There is no reason to discard the prosecution case or to accept the alternative theory given by the defence of suicide committed by Geeta Devi alongwith her three children by pouring kerosene on herself and her children. Once the prosecution established a prima facie case, the appellant Ram Shankar (husband) was obliged to furnish a proper explanation under Section 313 Cr.P.C with regard to the circumstances under which the deceased met an unnatural death inside the house. His failure to offer a proper (acceptable) explanation, therefore, leaves no doubt for the conclusion of his being the assailant of the deceased.

2.(2006) 10 SCC 681

3. (2000) 8 SCC 383

4.(2012) 6 SCC 107

5.(2019) 10 SCC 211

31. On the above issue, we find no reason to differ from the findings of the trial court. However, the findings recorded by the trial court that three inland letters proved by the prosecution witnesses would be admissible in evidence under Section 32(1) of the Code of Criminal Procedure, is found to be erroneous, in as much as, those three letters were not put to the appellant Ram Shanker during his examination under Section 313 Cr.P.C.

32. Disagreeing with this part of the finding in the judgment of the trial court, for the above discussion, the judgment and order dated 15.04.2009 passed by the Sessions Judge, Kannauj for conviction of the appellant for the offence under Section 302 I.P.C is hereby upheld. The sentence is appropriate.

33. The appeal is **dismissed** being devoid of merits.

34. The appellant no.1-Ram Shanker is in jail.

35. Certify this judgment to the court below immediately for necessary action.

36. The trial court record be sent back immediately.

Order Date :04.04.2022

Harshita