

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (DB) No. 43/2021

Amrit @ Darab @ Pappu son of Pitram, Resident of Village Bada Wazidpur, Police Station Nadoti, District Karauli (Rajasthan) presently confined in Special Central Jail, Shyalawas Dausa

----Accused-Appellant

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

For Appellant(s)	:	Mr. Dheeraj Singhal
For Respondent(s)	:	Mr. Amit Kumar Punia, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL

Judgment

Date of Conclusion of Arguments	: 13.04.2026
Date on which judgment is reserved	: 13.04.2026
Whether the full judgment or only the operative part is pronounced	: Full Judgment
Date of pronouncement	: 21.04.2026

Per Hon'ble Mahendra Kumar Goyal, J.

By way of this criminal appeal, the accused-appellant (for short, 'the appellant') has assailed the legality and validity of the judgment dated 30.09.2016 passed by the learned Additional Sessions Judge, No. 2, Hindaun City, District-Karauli (for short, 'the learned trial Court') in Sessions Case No. 51/2016 (03/2014) whereby, he has been convicted and sentenced as under:-

Under Section 302 IPC:- Life imprisonment with fine of ₹10,000/-; in default whereof, one year's additional simple imprisonment.

In nutshell, the facts are that Vishnu Khatana (PW1)

submitted a written report dated 04.11.2013 at about 01.45 pm with Police Station Nadoti, District Karauli stating therein that in the night of 01.11.2013, after having dinner, his cousin Dhara Singh @ Dara Singh slept at about 10.00 pm in a room and in the nearby room, his younger brother Amrit @ Darab @ Pappu was sleeping. It was averred that in the morning of 02.11.2013, Dhara Singh was found dead with ligature mark, from a rope, on his neck. It was alleged that the appellant used to threaten to eliminate Dhara Singh and has murdered him by strangulation. Based thereupon, an FIR No. 294 dated 04.11.2013 was registered under Section 302 IPC. After investigation, the appellant was charge-sheeted under Section 302 IPC whereunder, charge was also framed against him. After trial, he has been convicted and sentenced, as stated hereinabove.

Assailing the judgment, learned counsel for the appellant contended that findings of the learned trial Court are based on conjectures and surmises and it has erred in convicting him in absence of any legally admissible evidence. Inviting attention of this Court towards the testimony of Rampati (PW3) and Pitram (PW4)-mother and father of the deceased respectively, he contended that they have admitted their absence from the place of incident in the night and could not have been reckoned as the witnesses of 'last seen'. Learned counsel submitted that the prosecution has also failed to establish the motive behind commission of the offence which has great relevance in the cases based on circumstantial evidence. He argued that the prosecution could not establish the complete chain of circumstances leading to only conclusion of his guilt. He, therefore, prayed that the appeal

be allowed, the judgment impugned dated 30.09.2016 be quashed and set aside and he be acquitted of the charge framed against him.

Per contra, learned Public Prosecutor, opposing the submissions, contended that the learned trial Court has held the appellant guilty of the charge under Section 302 IPC after appreciation of cogent evidence on record. He submitted that the deceased was last seen in the company of the appellant, they slept under the same roof and in the morning, the deceased was found dead; but, the appellant failed to furnish any satisfactory explanation for it. He canvassed that all the witnesses have stated in unison that the appellant had a grudge against the deceased on account of his engagement prior to him. He also contended that there was recovery of the rope used by the appellant in commission of the offence based on his disclosure statement. He, therefore, prayed for dismissal of the appeal.

Heard. Considered.

As per the opinion of the Medical Board which conducted the autopsy as reflected in the postmortem report (Ex. P11) which was proved by Dr. Dharam Singh Meena (PW14) and Dr. Ratnesh Meena (PW15)-the Members of the Medical Board, cause of death of Dhara Singh @ Dara Singh (deceased) was found to be asphyxia due to strangulation which was sufficient to cause death. It was also found that deceased had transverse ligature mark around the neck completely encircling it below the thyroid cartilage with 1 cm. width. Thyroid cartilage was found to be fractured with healthy and non-fractured hyoid bone. Ecchymosed was also found around the mark of the ligature. During their

cross-examination, both the doctors have specifically denied that it was a case of suicide. In view thereof, it was a proven case of homicidal death.

Indisputably, the case is based on circumstantial evidence. Now the moot question before this Court is as to whether the prosecution has been able to establish the complete chain of circumstances leading to only possibility of guilt of the appellant.

Their Lordships have, in the much celebrated case of **Sharad Birdhichand Sarda Vs. State of Maharashtra; (1984) 4 SCC 116**, held as under:-

"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 & Anr. v. State of Maharashtra where the following observations were made: [SCC para19, 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 constitute the panchsheel of the proof of a case based on circumstantial evidence and in absence of a corpus delicti.

If the prosecution evidence is examined on the touchstone of the aforesaid golden principles laid down by the Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda (Supra)**, we arrive at following conclusion.

The deceased was elder brother of the appellant. From the testimony of Vishnu Khatana (PW1)-cousin of the deceased, Siyaram (PW2)-uncle of the deceased, Rampati (PW3)-mother of the deceased and Pitram (PW4)-father of the deceased, it was established that the deceased as also the appellant slept in the fateful night of 01.11.2013 in the same house though, in different rooms and their mother was sleeping in a '*pator*' (a makeshift construction) in the vicinity and the father was sleeping outside in the verandah and in the morning of 02.11.2013, while, the deceased was found dead, the appellant was found missing.

As already observed, the death was unnatural and homicidal. Since, only the appellant and the deceased were sleeping in the fateful night under the same roof and the deceased was found dead in the morning and the appellant missing, Section 106 of the Evidence Act rests upon the appellant the burden to offer a credible explanation as to the circumstances whereunder, the deceased-his elder brother, met with the unnatural death by strangulation. But, the defence, except a suggestion to the prosecution witnesses that it was a case of suicide, suggested nothing else to them to discharge the burden. At the cost of

repetition, we may observe here that both the Members of the Medical Board, i.e., PW14 and PW15, have categorically denied the suggestion made to them during their cross-examination that it was a case of suicidal death. We also notice that except making a bald assertion that he was innocent, the appellant also failed to offer any explanation in his plea recorded under Section 313 CrPC.

Their Lordships have, in the case of **Manohar Keshavrao Khandate Vs. State of Maharashtra; 2025 INSC 953** involving identical controversy, while rejecting the appeal preferred by the appellant against his conviction, held as under:-

“10. Suffice it to say, that the child witness had no reason whatsoever to give false evidence implicating her own father for the murder of her mother. The bald plea of denial advanced by the accused-appellant in his statement under Section 313 CrPC, is clearly an after-thought and insufficient to discharge the burden cast upon him by Section 106 of the Evidence Act, 1872.

14. The High Court, upon re-appreciating the evidence led by the prosecution, arrived at the conclusion that the evidence of the child witness was reliable and trustworthy and that the defence of denial taken by the accused-appellant was flimsy and unacceptable. On the contrary, in terms of Section 106 of the Evidence Act, the burden rested upon the accused-appellant to offer a credible explanation as to under what circumstances the deceased Smt. Ranjana, sustained the fatal injuries, particularly when the incident took place within the four walls of the house where the accused-appellant resided with the deceased Smt. Ranjana.”

Further, on the disclosure statement made by the appellant, a nylon rope, used by the appellant in the commission of offence, was recovered from an iron box placed inside an almirah from the

residential house of the parties. Lock of the box was opened by the appellant from the key found in his possession at the time of his arrest. The recovery has been proved by the panch witnesses and we find no reason to doubt the same. Thus, the prosecution was able to establish that the strangulation, cause of death, was committed by the appellant with the nylon rope recovered at his instance.

Moreover, almost all the prosecution witnesses comprising of parents of the parties, their family members and villagers, such as Vishnu Khatana (PW1), Siyaram (PW2), Rampati (PW3), Pitram (PW4), Rajanti @ Chinta (PW5), Rekh Singh (PW6) S/o Nanguram, Omprakash (PW7), Devi Singh (PW8), Rekh Singh (PW9) S/o Ramsi and Naresh (PW10) have stated in unison that the appellant had a grudge against the deceased on account of his engagement and scheduled marriage prior to his marriage and he used to threaten of eliminating the deceased if married prior to him. Their testimony could not be impeached during their cross-examination and their version as to motive behind commission of the offence remained unshattered.

There is one more important aspect of the matter pertaining to conduct of the appellant. Section 8 of the Evidence Act provides as under:-

8. Motive, preparation and previous or subsequent conduct.—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct

of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.--The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.--When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

As per the aforesaid provision, conduct of an accused is relevant fact if such conduct influences or is influenced by any fact or issue or relevant fact whether, it was previous or subsequent thereto.

The Hon'ble Apex Court has, in the case of **Dayal Kurmi Vs. State of Assam; Criminal Appeal No. 1348/2024**, held as under:-

"10. By all available evidence, it is clear that the appellant was in the house on the same day. His case is that he was not in the house but he was in Shani Temple at Tinsukia. There is not evidence of alibi produced in his support. But be that as it may, there is absolutely no explanation as to why the appellant would not reach his house when he was informed that his wife has been burnt to death and go to the house or at least be present at cremation ground for the last rites of his wife. His unexplained absence is an important factor for the court to consider under Section 8 of the Evidence Act. The evidence of the doctor PW8 is also important who clearly states that this was a homicidal death, considering the nature of burn injuries, when there are no burn injuries on the palm."

In the case of **Arabindra Mukherjee Vs. State of West Bengal; 2011(14) SCC 352**, their Lordships have held as under:-

“5. Once the appellant was last seen with the deceased, the onus is upon him to show that either he was not involved in the occurrence at all or that he had left the deceased at her home or at any other reasonable place. To rebut the evidence of last seen and its consequences in law, the onus was upon the accused to lead evidence in order to prove his innocence. It was also for the accused to establish that he was falsely implicated. The stand taken by the accused in his statement under Section 313 of the Code of Criminal Procedure, was a complete denial of involvement and a result of false charges by the appellants. Once the prosecution had established its case, it was expected from the appellant to prove his defence of false implication. The conduct of the accused-appellant also is suspicious in the sense that after the occurrence he was absconding and with difficulty the police could trace and arrest him.”

Thus, in the aforesaid cases, it was held by the Hon’ble Supreme Court that unexplained absence of the accused at the scene of crime despite information that his/her near or dear was murdered as also unexplained absence from the cremation ground are important factors for the Court to consider under Section 8 of the Evidence Act.

In the instant case also, it was established from the evidence available on record that while, the appellant was sleeping along with the deceased under the same roof in the fateful night, he was found missing from the house in the morning when his elder brother was found murdered. He was also not present at the cremation rather, came to be arrested on 05.11.2013, i.e., on the fourth day of the commission of the offence. It was also reflected

from the prosecution evidence that he used to reside with his parents in the same residential house; but, the appellant has offered no explanation, in his statement recorded under Section 313 Cr.P.C., for his absence soon after the commission of the offence for such a long period which could safely be considered as an adverse circumstance against him in the chain of circumstances to prove his guilt.

We find yet another salient aspect of the case. Smt. Rampati (PW3) and Pitram (PW4) have lost their elder son on account of his murder and unless there were strong compelling reasons to prove otherwise, they would not have falsely deposed against their only remaining son-the appellant. We find from the evidence on record that there was no dispute between the brothers with regard to any land/property except that the appellant had a grudge against the deceased on account of his engagement and scheduled marriage before his. None of the parents was suggested, during their cross-examination, any reason for false implication of their only remaining son-the appellant. In these circumstances also, we find their testimony to be trustworthy and reliable. In the case of **Shamim Vs. State (GNCT of Delhi); MANU/SC/1016/2018**, a three Judges Bench of the Hon'ble Supreme Court of India, has held as under:-

9. In a criminal trial, normally the evidence of the wife, husband, son or daughter of the deceased, is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit. We see no reason why the same principle cannot be applied when such a witness deposes against a closely related Accused. According to normal human behavior and conduct, a witness would tend to shield and protect

a closely related Accused. It would require great courage of conviction and moral strength for a daughter to depose against her own mother who is an Accused. There is no reason why the same reverse weightage shall not be given to the credibility of such a witness.

In the conspectus of aforesaid analysis, we are of the considered view that the prosecution has been able to establish the complete chain of circumstances leading to the only irresistible conclusion of guilt of the appellant in commission of murder of his elder brother.

Resultantly, the appeal is dismissed.

(BHUWAN GOYAL),J

(MAHENDAR KUMAR GOYAL),J