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UPKJ010025902024

In The Court of Sessions Judge, Kannauj

Presiding Officer- Shri Chandrodaya Kumar (H.J.S.) UP06553

Session Trial No.- 649 of 2024

State of Uttar Pradesh

....Prosecution

Versus

1. Neelu Yadav, son of Madan Singh, and
2. Mewaram, son of Madan Singh

Residents of village Paltepurva, mauza Paithana, police station Thathiya,
district Kannauj

....accused

Crime No.-61/2024

Under Sections 306,323,504

Indian Penal Code

Police station- Thathiya, District Kannauj.

JUDGMENT

The accused, Neelu Yadav and Mewaram, have been charged with and prosecuted for offences under Sections 306, 323, and 504 of the Indian Penal Code.

Factual Matrix

2. The prosecution's story begins with a written complaint (Tahrir) submitted by the applicant, Gulab Singh, at the Thathiya police station in district Kannauj. In his complaint, he states that his daughter, Sonam, was married to Neelu of the village of Paltepurva, Mauja-Paithana, under the jurisdiction of the Thathiya police station in district Kannauj. On March 16, 2024, at around 5 pm, the complainant's son-in-law Neelu, son of Madan Singh and Mewaram, son of Madan Singh, killed his daughter Sonam by assaulting her with a sharp weapon and strangulated her, with which one of her eyes was found ruptured, and one ear cut and severe injuries were found all over the body. Upon receiving the information, the complainant visited the Thathiya police station to file a report. He requested that his report be registered and that legal action be taken.
3. Based on the complainant's application, Exhibit Ka-1, case No. 61/2024, was registered against the accused at Police Station Thathiya, District Kannauj, under Section 302 of the Indian Penal Code (IPC).

4. Sub-inspector Anand Kumar Pandey conducted the inquest on March 17, 2024, at 10:40 am, and an inquest report (Panchayatnama) was prepared. Finding death suspicion of murder, the dead body was sent for postmortem. In furtherance, Photo Corpse, Challan Corpse, and a letter to the Chief Medical Officer (CMO) were prepared

5. The post-mortem of the deceased, Sonam, aged about 27, was conducted by Dr Himanshu Yadav, Medical Officer at the District Hospital, Kannauj. Post-mortem report Exhibit Ka-2 was prepared. The injuries sustained by the deceased before death are as follows:

i- An incomplete ligature mark was present on the neck, measuring 25 x 2.5 cm, located 06 cm below the pinna of the right ear, 05 cm below the chin and 03 cm below the pinna of the left ear. The circumference of the entire neck was measured at 30 cm. On dissection of this injury, the subcutaneous tissue appeared white, dry, hard, glistening parchment-like.

ii- A 4 x 2 cm contusion mark was present on the left side of the chest just below the left collarbone.

iii- An abrasion mark measuring 3 x 1 cm was on the right elbow.

iv- An abrasion mark measuring 2 x 1 cm was on the left forearm.

v- A swollen contusion mark measuring 2 x 3 cm on the right eye was present. On opening the eye, there was an underlying eyeball rupture.

vi- An abrasion mark measuring 4 x 2 cm was present on the front part of the right leg.

vii- An abrasion mark measuring 2 x 2 cm was present on the ventral aspect of the right big toe.

viii- A lacerated wound measuring 1 x 1 cm was present on the medial aspect of the left big toe.

ix- A lacerated wound measuring 5 x 2 cm was present, with the lobule of the left ear missing.

6. The medical officer also noted the following:

Height 163 cm. Average built. Rigor-mortis was present all over the body. Postmortem staining was present on the back and dependent part. Nail and face cyanosed. Eyes closed and mouth partially opened. Meninges, meningeal spaces, cerebral vessels and the brain were congested. The hyoid bone was intact, while the trachea was congested. Both lungs were congested. The heart's right chamber was full of blood, while the left was empty. 100 ml of semi-solid food was in the stomach, gases and pasty material in the small intestine and gases and faecal material in the large intestine. The liver was congested, while the gall bladder was found surgically removed. The spleen and both kidneys were congested. 50 ml urine was found. ***The cause of death was stated to be asphyxia due to anti-mortem hanging. The duration of death was about half to one day.***

7. The investigation into this case was commenced. The investigating officer inspected the location and prepared a map labelled Exhibit Ka-5. Witness statements were recorded, and after completing the investigation and

finding sufficient evidence, a chargesheet, designated Exhibit Ka-6, was submitted to the Chief Judicial Magistrate (CJM) of Kannauj against the accused, Nilu Yadav and Mewaram, under Sections 306, 323, and 504 of the Indian Penal Code replacing the initial Section 302.

8. CJM Kannauj took cognisance of the matter and, finding the case triable by the Court of Sessions, committed it to the Court of Sessions following the procedure outlined in Section 207 of the Code of Criminal Procedure (CrPC).

9. On July 8, 2024, this court framed charges against accused Neelu Yadav and Mewaram under Sections 306, 323, and 504 of the Indian Penal Code. The accused denied the charges and requested a trial.

10. To prove the prosecution story, the prosecution examined the following witnesses-

PW-1 Ms Pranshi, teacher, the witness of lowering down from the noose,

PW-2 Ragini, neighbour, the witness of lowering down from the noose,

PW-3 Complainant Gulab Singh, father of the deceased,

PW-4 Sandeep, a resident of the same village,

PW-5 Archana, Sister of the deceased,

PW-6 Sunny Kumar, neighbour,

PW-7 Kanhaiya Lal, neighbour,

PW-8 Doctor Himanshu Yadav conducted the postmortem,

PW-9 Constable Priyanka, formal witness,

PW-10 Investigating Officer Kishan Pal Singh and

PW-11 Sub-Inspector Anand Kumar Pandey, conducted inquest.

The following documents have been produced and proved:

Complaint application (Tahrir) Exhibit Ka-1 by complainant PW-3,

Postmortem report Exhibit Ka-2 proved by PW-8,

FIR Exhibit Ka-3 and GD Exhibit Ka-4 by PW-9,

Site Map Exhibit Ka-5 and Charge Sheet Exhibit Ka-6 by PW-10, and

Panchayatnama Exhibit Ka-7, Letter to CMO Exhibit Ka-8, Challan Body Exhibit Ka-9, Sketch body Exhibit Ka-10 and Sample Seal Exhibit Ka-11 by PW-11,

11. After the prosecution's evidence was concluded, the accused's statement was recorded under Section 313 of the CrPC. The accused denied all allegations made by the prosecution, claiming that the case was based on a misunderstanding. They refused to present any evidence in their defence,

stating that the deceased, Sonam, wanted to divide the house, which the brothers opposed. As a result, they said that Sonam committed suicide.

Arguments

12. I have considered the arguments of the District Government Counsel for the prosecution and the advocate for the accused and perused the record. District Government Counsel argued that the accused people and the deceased reside in the same house. They were habitual drinkers and often beat the deceased over a property sale dispute. They beat the deceased severely and ruptured an eyeball, which led the deceased to commit suicide. Defence counsel argued that the injuries resulted from a fall while lowering the body from the noose. No witnesses supported the prosecution's case.

Evidence

13. Pranshi, a 19-year-old educator residing in the same village, is classified as a hostile witness. Pranshi, a 19-year-old teacher living in the same village, is a hostile witness. She declined to provide tutoring services to Neelu's daughter, visit the incident site on March 16, 2024, at 05:00 pm, and deliver a statement to the police. On and was cross-examined by the learned District Government Counsel (Criminal). She stated on cross-examination that **she did not know if the police had come to the village**. She refused the suggestion that she was not presenting an accurate statement today due to considerations surrounding the notions of good and evil. I find force in suggestion. How can it be believed that she did not know if the police had visited the village?

14. PW2, Ragini, aged 20, a resident of the same village, deposed that on March 16, 2024, at around 05:00 pm, she heard cries from Neelu Yadav's house. When she ran there, a crowd had gathered at the spot. She saw that **someone had taken Sonam's body down from the noose and laid it on the ground**. She does not know whether Mewaram had fled after Sonam's death.

15. PW3, complainant Gulab Singh, father of the deceased, stated in the examination-in-chief that the incident occurred on March 16, 2024, at around 05:00 pm. Neelu Yadav is his actual nephew. Neelu Yadav has three brothers: the eldest brother's name is Sarwan, the second is Neelu, and the third is Mewaram. He married his daughter Archana to Neelu's elder brother Sarwan and Sonam to Neelu. Sarwan lived separately from his family. Neelu and Mewaram lived in the same house. Around 9-10 years they have had passed since Sonam's marriage. Sonam also has three children. **Neelu and Mewaram are alcoholics. They sold their share of the farmland and spent all the money on drinking. When son-in-law Neelu and his brother Mewaram used to sell their farmland for alcoholism, her daughter Sonam used to stop them from doing so. On this, these people used to abuse and beat Sonam.** He had tried to persuade her son-in-law Neelu and his brother Mewaram many times that they should not sell their land for alcoholism and should not harass her daughter Sonam. **But both of them did not listen. A day before the incident, these people had sold a cow, the money of which**

was with Sonam. On March 16, 2024, at around 05:00 pm, the accused asked Sonam for money to drink. When Sonam refused, both of them beat Sonam and killed her by strangling her and fled from the spot. When he got the information about his daughter's death, he went to Sonam's in-laws' house with his family, where he found Sonam dead. Sonam had injuries on her body. He had written a report of the incident at Thathiya police station. **When paper no. 9A/4 available on the record was shown to the witness and read out. The witness said he had got this complaint written by an unknown person and given it to the police station. He confirmed his signature on it.** Exhibit Ka-1 was marked on it. The police came to the spot, sealed the dead body, and got the post-mortem of his daughter, Sonam, done.

16. In the cross-examination by the learned counsel for the accused, this witness said that he had married his daughter Sonam to Neelu 12 years ago. His elder daughter **Archana informed him about Sonam's death at around 05-06 in the evening. When he reached there, the villagers told him the wrong things, so he went to Thathiya police station to file a report. He went to lodge the report at night itself. He stayed at the police station at night.** Diwan Ji wrote the report at the police station through some unknown person. He registered the case based on the information given by the people. **He does not know how much land Neelu and Mewaram have. He does not know what was written in his Tahrir Exhibit Ka-1.** The villagers told him the matter of Neelu and Mewaram drinking alcohol and selling the field and the cow. He has not written these things in his written application. When the witness was asked about the paper no. 6B/13, he said he had given this affidavit before the Superintendent of Police. He supports the statement in para no. 6 that the “son-in-law of the deponent took care of all the comforts of the daughter. The deponent's son-in-law and Mewaram never harassed his daughter. He also supports the statement in para No. 7 that “**his daughter had been pressurising his son-in-law to live separately from the family for some time regarding the division of land**, he had also persuaded his daughter. Still, she was stubborn and irritable by nature. **Due to not being able to separate from the family regarding the division of land, she committed suicide by hanging herself**”. These things are true. His daughter was of a very strong body. **She had sustained injuries while being taken down from the noose.** As per the information given by the people of the village, he had filed a report against his son-in-law Neelu Yadav and Mewaram at the police station.

17. PW4 Sandeep stated in his examination-in-chief that Sarwan, Neelu and Mevaram are brothers. Their residence is at some distance from his house. **Neelu and Mevaram reside together**, and Sarvan resides separately. **Both drink occasionally. Neelu and Mevaram sold their land.** He does not know where he spent the sale proceeds. He knows nothing about selling the cow or the maarpeet, abuse or conflicts that occurred between them. On March 16, 2024, at around 05:00 pm, he was coming after cutting fodder from his fields, and there was a considerable crowd at Neelu's door. When he went near, he

saw Sonam's body lying on the ground. After some time, the police came. Neelu and Mevaram were found missing in the search by police. The villagers had told that Sonam had died by hanging. **The police interrogated him.**

18. In cross-examination, he stated that he did not know who lowered the body from the noose. The police neither interrogated him nor took his statement.

19. PW5 Archana stated in the examination-in-chief that the deceased Sonam was her real younger sister. **She and Sonam were married in the same house. Her husband Sarwan and Sonam's husband Neelu were real brothers.** Mewaram is her brother-in-law. Mevaram is not married. Her home is in front of Sonam's sister's house. **Neelu and Mewaram's share of the land was sold for a government perfume factory.** Sonam's financial condition was terrible. Neelu and Mewaram do not drink alcohol. Sonam had not sold her cow a day before the incident. Neelu and Mewaram had not even asked Sonam for the proceeds of the sale of the cow. **Sonam used to quarrel with her husband Neelu to separate from Mewaram.** However, Neelu did not want to separate from Mewaram, and Neelu and his wife Sonam used to quarrel over this issue. Fed up with this, Sonam committed suicide by hanging herself. She was cutting berseem fodder in her nearby house when she heard Sonam's daughter Tanya screaming, so she ran to Neelu's house and saw that her sister Sonam was hanging from a noose made of sari in her room. She fainted after seeing her hanging. When she regained consciousness, Sonam's dead body was lying on the ground.

20. In the cross-examination by the learned counsel for the accused, this witness said that Neelu was married to his sister about 12 years ago. Sonam also has three children between 8 and 5 years old. Neelu, Mewaram and Sonam live together. Nearly one bigha of the land of Neelu and Mewaram went to the government perfume factory. They got about 6 lakh rupees as compensation. Adding 1 lakh to the said 6 lakh gave these people jewellery worth 7 lakh rupees made for Sonam. They still have two cows and a buffalo she is taking care of. Sonam used to pressure her husband Neelu to separate from Mewaram. Neelu was not ready for this. Her father is Gulab Singh. Her father, Gulab Singh, also often persuaded people that dividing the property among themselves was not right. Her house was opposite Neelu and Mewaram's, so she knew that Neelu and Mewaram had never beaten her sister Sonam. **The police inspector did not question her, nor did he take her statement.**

21. PW6, Sunny Kumar, and PW7, Kanhaiya Lal, testified that they were neighbours of the accused. The accused sold their land for a perfume park. The deceased wanted to separate from Mevaram, but Neelu was unwilling to do so. This disagreement led to frequent quarrels, which ultimately contributed to the deceased's suicide. When they arrived at the scene, neither they nor the police found the accused there. Although their testimony did not

support the prosecution's case, the prosecution chose not to cross-examine them.

22. The accused have been charged u/s 306 IPC. Section 306 IPC reads as follows:

“S. 306: Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Abetment has been defined u/s 107 IPC, which reads as-

“S. 107: Abetment of a thing

A person abets the doing of a thing, who-

First.-Instigates any person to do that thing; or

Second.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Third.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

Case Laws and Analysis

23. The Hon'ble Apex Court held in its three Judges' Bench judgment rendered in the case of [Ramesh Kumar v. State of Chhattisgarh](#) reported in AIR 2001 SC 3837 (1) that a word uttered in a fit of anger or emotion without intending the consequences actually to follow cannot be said to be an instigation. The relevant portion is reiterated here:

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation, though, it is not necessary that actual words must be used to that effect, or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case an instigation may have been inferred. A word uttered in a fit of anger or emotion without

intending the consequences to actually follow cannot be said to be instigation.

21. In *State of W.B. v. Orilal Jaiswal*, MANU/SC/0321/1994 : (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

24. In the case of [M. Mohan v. State Represented By The Deputy Superintendent of Police](#), MANU/SC/0161/2011: (2011) 3 SCC 626, the Hon’ble Apex Court has observed that to convict a person under Section 306 of the Indian Penal Code there has to be a clear mens rea to commit the offence and held:

“45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

25. The Hon’ble Apex Court, in the case of [Gangula Mohan Reddy v. State of Andhra Pradesh](#), reported in 2010 (1) SC 750 after considering the dictum laid down in its various earlier decisions held as under:

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section [306](#) IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option, and this act must have been intended to push the deceased into such a position that he commits suicide.”

26. The FIR is very brief, informing the murder of his daughter. There is no direct account regarding the circumstances of the injuries sustained by the deceased. The injuries were incurred in the matrimonial home; however, no individuals have come forward to explain these injuries. Even the accused

parties refrained from discussing any details concerning the injuries during their examinations under Section 313 of the Code of Criminal Procedure (CrPC). Notably, PW3, the father of the deceased, reversed his position during cross-examination, asserting that his daughter had a robust physique and had sustained her injuries while being lowered from the noose. Furthermore, PW5, who arrived at the location shortly after the incident, also omitted to mention the untying of the noose, claiming that she fainted upon witnessing her sister hanging. According to the postmortem report, the deceased had an average physique, measuring 163 cm in height, and the injuries noted were determined to be antemortem. **The postmortem doctor PW8 has explicitly refuted the assertion that the injuries were sustained postmortem, presenting well-reasoned and credible explanations. He testified that swelling does not occur in cases of postmortem injuries, as evidenced by injury number five. Furthermore, he dismissed the claim that a lacerated wound caused by a sharp-edged instrument and the signs of inflammation found on the body can manifest posthumously.** The testimony provided by PW3 in cross-examination regarding injuries does not align with the postmortem report.

27. PW3 deposed halfheartedly. It is evident why PW3 has exhibited hostility during cross-examination. This hostility stems from the intricate relationships between the in-laws and the witnesses involved. Specifically, the daughter of the complainant, PW3, is married to the elder brother of the accused, while the accused, Neelu, is the son of PW3's sister. Individuals may feel pressured to make concessions in light of these familial ties. There is concern regarding the safety of PW3's other daughter, leading to a likelihood that someone may feel compelled to acquiesce to their sister's interests.

28. Selling farmland to fund alcoholism has always been a significant concern for housewives in rural communities. They feel a sense of security even if they only own a small piece of land. Honestly, no housewife with three children would want the money from selling their land to be spent on alcohol. Per PW3 and PW4, Neelu and Mewaram were alcoholics. They sold their share of the farmland. Per PW3, they spent all their money on drinking. When son-in-law Neelu and his brother Mewaram used to sell their farmland for alcoholism, her daughter Sonam used to stop them from doing so. On this, these people used to abuse and beat Sonam. Per PW5, Sonam had three children between 8 and 5 years old. Neelu, Mewaram and Sonam lived together. Nearly one bigha of the land of Neelu and Mewaram went to the government perfume factory. They got about 6 lakh rupees as compensation. The reason behind the tussle between the accused individual and the deceased was well-founded. Though witnesses are managed witnesses, essential circumstances may be gathered from their testimonies. Every father understands the factors contributing to the mistreatment of his daughter within her marital household.

29. There are clear indications that the defence gained over PW3 and the rest of the prosecution witnesses, which is why they took a U-turn or became hostile in the Court. The testimony of a hostile witness is not entirely

rejected, and it is well settled that a portion of the evidence of a hostile witness consistent with the prosecution's case can be relied upon by the prosecution. Now, a question may be posed as to whether statements made by PW3 in examination-in-chief would bind the prosecution because DGC (Criminl) did not cross-examine him. The purpose behind the cross-examination of a witness by the party who called him is to remind the witness what he had said on a previous occasion. This may so happen that the witness, on account of lapse of time, loss of memory, forgetfulness, or any other reason of the same kind, could not reproduce his statement made before the police but on being cross-examined by the party calling him the witness may admit of making such statement (s) before the police. However, a witness who supported the prosecution wholeheartedly but later denied everything he had said in court becomes a tutored witness of the defence; the statement of such a witness who turns hostile to the prosecution cannot be relied upon by the defence, and a part of the testimony of a hostile witness who does not support the prosecution case must be excluded from consideration. Why the accused absconded after the incident is also an unanswered question. The Hon'ble Apex Court has held it in the case of **Nathusingh v. State of M.P.: MANU/SC/0139/1973 : (1974) 3 SCC 584**, that the evidence of a public hostile witness cannot destroy the prosecution case or make it doubtful and the mere fact that witnesses are police officers was not enough to discard their evidence. Similarly, the Hon'ble Apex Court has held in the case of **State of U.P. v. Sahai and Ors.: MANU/SC/0258/1981: (1982) 1 SCC 352** that the testimony of the prosecution witnesses, who are otherwise reliable, cannot be doubted merely based on some stray statement from a hostile witness. The statement of a hostile witness in the cross-examination by the defence remains untested and, therefore, cannot be admitted in evidence. The hostile witness becomes a witness for the defence, but this is no longer a debatable issue that a part of the evidence of a hostile witness is admissible in evidence and usable by the prosecution in so far as it supports the prosecution's case as observed by the Hon'ble Apex Court in **Bhagwan Singh v. State of Haryana: MANU/SC/0093/1975: (1976)1 SCC 389**, that characterising a witness as a hostile witness does not completely efface his evidence. There is no legal bar to base a conviction upon his testimony if **corroborated** by other reliable evidence.

30. There is no infirmity in the testimony of PW3 and PW4, and his evidence in the Court is entirely in tune with the statements made before the IO. However, it is not in toto. There are direct indications that the defence influenced witnesses, and that is why the witnesses are not deposing whatever they stated before the investigating officer. The statement of PW4 under section 161 of the CrPC is reiterated here as follows: Neelu Yadav and Mewaram were addicts of drinking alcohol who sold their share of land and spent all the money on drinking alcohol. When Neelu Yadav's wife Sonam opposed this, Neelu Yadav and his brother Mewaram used to harass Sonam, abuse her and beat her every day. Sonam had sold a cow on Friday, a day before the incident. Sonam kept the money for the sold cow, so on 16.3.2024,

during the day, Neelu Yadav S/O Late Madan Singh and Mewaram S/O Late Madan Singh asked Sonam for money to drink alcohol. When Sonam did not give the money, both of them beat and abused Sonam and harassed her a lot. After beating her, Neelu Yadav and Mewaram left the house. Then Sonam hanged herself at around 05:00 pm by making a noose of her sari. When Priyanshi came to Neelu Yadav's house to pay her tuition fees, she screamed, and he went to the spot. The door was opened by pushing. Sonam was hanging from the noose. Mewaram cut the sari off the noose, and Sonam fell. When he saw Sonam, she was dead. Meanwhile, Mewaram ran away from the spot. Priyanshi has become totally hostile in the box due to the evil of good and bad, as discussed before. Under section 161 CRPC, no witness stated that Sonam used to quarrel with her husband Neelu to separate from Mewaram. PW5 has not stated Under section 161 CRPC that when she regained consciousness, Sonam's dead body was lying on the ground. There is no reason for the IO to record the wrong statement. It is held in the case of [Devender Pal Singh vs. State National Capital Territory of Delhi and Ors. \(22.03.2002 - SC\): MANU/SC/0217/2002](#), that the presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor.

31. The law regarding the suicide of a woman in a matrimonial house is well-settled. In the case of [Kalu vs. State of Madhya Pradesh \(07.11.2019 - SC\): MANU/SC/1527/2019](#), the Hon'ble Apex Court has observed regarding suicide by a lady in a matrimonial home as follows:

“12. In the circumstances, the onus clearly shifted on the Appellant to explain the circumstances and the manner in which the deceased met a homicidal death in the matrimonial home as it was a fact specifically and exclusive to his knowledge. It is not the case of the Appellant that there had been an intruder in the house at night. In Hanumant and Ors. v. State of Madhya Pradesh MANU/SC/0037/1952: AIR 1952 SC 343, it was observed

10.It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the Accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the Accused, and it must be such as to show that within all human probability, the act must have been done by the Accused....

13. In *Tulshiram Sahadu Suryawanshi and Ors. v. State of Maharashtra*, MANU/SC/0748/2012: (2012) 10 SCC 373, this Court observed:

“23. It is settled law that presumption of fact is a Rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the Accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the Accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in State of W.B. v. Mir Mohammad Omar.

38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the Accused. In Shambhu Nath Mehra v. State of Ajmer the learned Judge has stated the legal principle thus:

11. This lays down the general Rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. 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.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.

14. In *Trimukh Maroti Kirkan v. State of Maharashtra*, MANU/SC/8543/2006: 2006 (10) SCC 681, this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case:

14. *If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the Accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions--quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this Section throws some light on the content and scope of this provision and it reads:*

(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.

15. *Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an Accused to offer any explanation.*

22. *Where an Accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the Accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”*

32. Neither fingerprints nor DNA evidence was indeed collected from the scene. The investigating officer did not enlist the help of a dog squad. Additionally, neither the call detail records nor the phone location of the accused were obtained. However, it is in the public interest that the prosecution of an accused does not fall merely because the investigation was perfunctory or because the DGC (Criminal) failed to cross-examine a prosecution witness who turned hostile in the Court. The Court must examine the prosecution evidence to reveal some missing links, which are the result of the negligent investigation, and if, upon scrutiny of the prosecution evidence, the Court finds a portion of the prosecution evidence reliable, the Court shall act upon it.

33. The yardstick while considering the case of abetment of suicide of a wife in a marriage can be different from other suicide cases. It is very clear from the postmortem report that the accused persons maltreated, harassed and subjected the deceased to cruelty. Beating a woman for refusing to give money for alcoholism in a matrimonial home to the extent of rupturing her eyeball certainly instigates women to commit suicide. There is no explanation from the accused how the deceased suffered the injuries. The accused have absconded after the incident. There is no proof or receipt that the accused bought jewellery worth 7 lakh rupees for Sonam. Considering all the facts, circumstances and evidence on the record, I find the accused guilty beyond reasonable doubt for committing offences under sections 306 and 302 of the IPC. There is no specific evidence regarding the offence under section 504 of the IPC. Hence Accused Neelu Yadav and Mewaram Yadav were convicted under sections 306 and 302 IPC. The accused are not bailed out and are in jail. Fixed October 25, 2024, for hearing on the quantum of the sentence.

Date: October 23, 2024.

(Chandrodaya Kumar)
Sessions Judge,
Kannauj

25.10.2024

The convicts, Neelu Yadav and Mewaram, and their learned counsel appeared in court. Ld. DGC (Criminal) also appeared.

I heard about the quantum of punishment.

The convicts have submitted that this is their first offence. They have no criminal history, either before or after this case. Neelu Yadav has one son, about four years old, and two daughters, one about six years old and another about eight years old; Mewaram is not married yet. Convict Neelu has pleaded that he has liabilities to his family.

Ld. DGC (Criminal) has submitted that the convict hit his wife Sonam, by which her right side eyeball was ruptured. He should be punished with maximum punishment to convey a stern message to society.

Considering all the mitigating and aggravating factors and the facts and circumstances of the case, I am of the view that nine years of rigorous imprisonment for section 306 and a fine of Rs. 30,000 and one-year imprisonment and a fine of Rs. 1,000 for section 323 of the Indian Penal Code to convict Neelu Yadav; and, eight years of rigorous imprisonment and a fine of Rs. 30,000 for section 306 and one-year imprisonment and a fine of Rs. 1,000 for section 323 of the Indian Penal to convict Mewaram would serve the ends of justice.

ORDER

Upon conviction under Section 306 of the Indian Penal Code, in Session Trial No. 649 of 2024, Case Crime No. 61 of 2024, Police Station Thathiya, District Kannauj, the convict Neelu Yadav is hereby sentenced to nine years rigorous imprisonment and a fine of Rs. 30,000 (thirty thousand). In default on payment of the fine, the convict shall undergo imprisonment for six months.

Upon conviction under Section 323 of the Indian Penal Code, Neelu Yadav is sentenced to one-year imprisonment and a fine of Rs. 1,000 (one thousand). In default on payment of the fine, the convict shall undergo imprisonment for one month.

Upon conviction under Section 306 of the Indian Penal Code, the convict Mewaram is hereby sentenced to eight years rigorous imprisonment and a fine of Rs. 30,000 (thirty thousand). In default on payment of the fine, the convict shall undergo imprisonment for six months.

Upon conviction under Section 323 of the Indian Penal Code, Mewaram is hereby sentenced to one-year imprisonment and a fine of Rs. 1,000 (one thousand). In default on payment of the fine, the convict shall undergo imprisonment for one month.

The period spent in jail shall be set off. All the imprisonment shall run concurrently. Accordingly, the conviction warrant shall be prepared, and the convict shall be sent to prison to serve the sentence.

Records shall be consigned as per law to the record room.

Date: October 25, 2024

(Chandroday Kumar)
Sessions Judge,
Kannauj

I signed, dated and pronounced the judgment in the open court today.

Date: October 25, 2024

(Chandroday Kumar)
Sessions Judge,
Kannauj