



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
&
HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA**

**CRIMINAL APPEAL No. 6016 of 2022
SMT. MAMTA PATHAK
Versus
*THE STATE OF MADHYA PRADESH***

APPEARANCE

Shri Surendra Singh, Senior Advocate assisted by Shri Kapil Pathak,
Advocate alongwith appellant Smt.Mamta Pathak.
Shri Manas Mani Verma, Government Advocate for the State.

Date of hearing	:	29.4.2025
Date of judgment	:	29.7.2025

JUDGEMENT

As Per : Justice Vivek Agarwal

This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short “Cr.P.C”) is filed being aggrieved of judgment of conviction dated 29.6.2022 passed by learned III Additional Sessions Judge, Chhatarpur in Sessions Trial No.84/2021 convicting the appellant in person Smt.Mamta Pathak, W/o.Late Dr.Neeraj Pathak for the offence under Section 302 of the Indian Penal Code, 1860 (for short “I.P.C”) and sentencing her to undergo



rigorous imprisonment for life with fine of Rs. 10,000/- and in default of payment of fine to undergo additional imprisonment for six months.

2. The prosecution case in short is that Smt.Mamta Pathak had given merg intimation bearing No.26/21 at Police Station Civil Lines Chhatarpur, which was registered under Section 174 of the Cr.P.C. with regard to death of Dr. Neeraj Pathak. The merg was investigated by the Sub Inspector Pramod Rohit (PW.3) and in pursuance of merg investigation, he had prepared Lash Panchnama and Safina Form and had taken the statements of complainant Smt.Mamta Pathak. He had prepared the crime details and had collected postmortem report (Exhibit P/1) from the doctors and found that in the opinion of post-mortem doctors, Dr. Neeraj Pathak S/o.Chintamani Pathak, aged about 65 years, R/o.Loknathpuram, District Chhatarpur died due to electrocution. The first information report pertaining to Crime No.288/2021 was registered against Smt.Mamta Pathak for the offence under Section 302 of I.P.C.

3. The investigation commenced. The memorandum under Section 27 of the Indian Evidence Act, 1872 of the accused was obtained and as per her memorandum, the objects like sleeping pills, electric wire, DVR from the C.C.T.V camera installed in the house of the deceased, footage from the



C.C.T.V. camera, which contains views of the house of the accused, the video recording etc, were seized. After investigation, a charge sheet was filed against the appellant in the Court of Magistrate for the offence under Section 302 of the I.P.C. On 6.8.2021, the learned Chief Judicial Magistrate, Chhatarpur committed the case to Court of Sessions from where it was transferred to the Court of learned III Additional Sessions Judge, Chhatarpur for trial. The learned III Additional Sessions Judge, Chhatarpur found the charge proved against the appellant and convicted & sentenced her as mentioned in Paragraph No.1 of this judgment.

4. The appellant submits that she is innocent. She has been falsely implicated in this case. She was having very cordial and loving relationship with her husband Late Dr.Neeraj Pathak and, therefore, she cannot even think of causing any harm to her husband to whom she was committed for life, therefore, it is a case of false implication. The appellant also submits that she was working as Lecturer in Government College at Chhatarpur while her husband was the Chief Medical Officer in Government District Hospital at Chhatarpur. At the time of the incident, both of them were residing in the house at Lokhnathpurarm. The prosecution case is ill-founded because it is based on presumption that there were frequent quarrels between the appellant



Smt.Mamta Pathak and the deceased Dr.Neeraj Pathak on the basis of suspected fidelity of her husband. The evidence, which has been collected by the prosecution is neither relevant nor scientific so to substantiate the involvement of the appellant and connect her with the alleged offence.

5. The allegation of frequent quarrels between the husband and wife is not substantiated from the testimony of Dhaniram Ahirwar (PW.2), a Chowkidar for the house where the incident took place, who states in his examination-in-chief that he has no knowledge about the incident. He only knew that Dr.Neeraj Pathak was residing at Loknathpuram whereas his wife was residing in the house at Peptech Colony but at the time of the incident, Smt.Mamta Pathak was residing with Dr Neeraj Pathak at Loknathpuram as Dr Neeraj Pathak had brought her back ten months' prior to the date of incident. Dhaniram Ahirwar (PW.2) states that the couple have two children, namely, Nitish aged about 35 years and younger son Manas, aged about 30 years, who is residing abroad. The elder son Nitish Pathak was earlier residing with his mother and was visiting his father. Dhaniram Ahirwar (PW.2) was declared hostile and when leading questions were put to him, he states that he has no knowledge as to the dispute between husband and wife and the reason for their separation. Dhaniram Ahirwar (PW.2) in his cross-examination



admits that at the time of the incident, the corona virus was in spread at Chhatarpur, as a result of which, ten to fifteen persons died. The appellant submits that Dhaniram Ahirwar (PW.2) has not supported the theory of frequent quarrels between the couple.

6. Similarly, reading from the testimony of Chhandilal Bajpai (PW.4), it is submitted by the appellant that the prosecution allegation that Dr. Neeraj Pathak had called this witness on 29.4.2021 at about 11:51 AM complaining about the harassment being meted out by the appellant and locking him inside the bathroom is also not made out. Reading extensively from the testimony of Chhandilal Bajpai (PW.4), it is pointed out that his testimony alone is not sufficient to implicate the appellant by attaching any motive and, therefore, the prosecution has a very weak case.

7. It is pointed out by the appellant that the testimony of driver Ratan Singh Yadav (PW.12) proves that she had gone to Jhansi along with him & her elder son and when she returned back from Jhansi, her husband was alive. She had attended him and thereafter in the morning, he was found dead. Hence, that theory of the appellant causing electrocution to Dr. Neeraj Pathak is not made out.



8. Ratan Singh Yadav (PW.12) states that Smt.Mamta Pathak is known to him as in the year 2015, he had given driving license to her. She was posted at Maharajpur College and sometimes he used to drop her at Maharajpur College. On 30.4.2021 at about 6:00 AM, when Smt.Mamta Pathak had called him to take her to Jhansi, he informed her that he is busy in the work of driving and shall reach after two hours. At 8:00 AM, when he had reached her Loknathpuram house, Smt.Mamta Pathak asked him to take her to Jhansi for dialysis. At 9:00 AM, he had taken Smt.Mamta Pathak and her son Nitish in Ecosport Car to Jhansi. On way, they had stopped at Harpalpur where Smt.Mamta Pathak had given a bag to her mother. When they had reached Jhansi at about 1:00 noon, Dr.Mamta Pathak told him that she has to show herself to Dr.P.K Jain for dialysis. They kept on searching the dialysis centre of Dr.P.K.Jain but when it was not traceable, they reached Chiranjeev Hospital. Smt.Mamta Pathak had gone inside the Chiranjeev Hospital but the hospital people did not entertain her as she was not carrying her Covid report. Ratan Singh Yadav (PW.12) clearly states that the dialysis of Smt.Mamta Pathak was not performed. They had roamed at Sadar Bazaar upto 4:00 PM and when he asked Smt.Mamta Patahk that her Covid report must have been available by now but the Covid report was not available, thus, at 7:00 PM,



they left Jhansi for Chhatarpur. They returned to Chhatarpur and Ratan Singh Yadav (PW.12) parked the vehicle in the porch and left for his home.

9. It is submitted that Ratan Singh Yadav (PW.12) in his examination-in-chief though states that when he had parked the car in the porch, he had seen Smt.Mamta Pathak to be upset. When he had asked her as to why she is upset and why she did not consume any food for the whole day then she had confessed that she committed a blunder mistake but did not narrate as to what mistake was committed. He came out of the gate of the house of Smt.Mamta Pathak and met Dhaniram Ahirwar (PW.2), who had asked him as to who all had gone to Jhansi and whether the doctor had accompanied them or not. But it is submitted that in cross-examination, Ratan Singh Yadav (PW.12) has denied that Smt.Mamta Pathak on return from Chhatarpur had said that she committed a mistake and if she would have called the doctor then that mistake would not have taken place. Hence, the testimony of Ratan Singh Yadav (PW.12) is of no assistance.

10. The appellant points out that the postmortem report (Exhibit P/1) shows the cause of death as shock due to cardio respiratory failure, as a result of electric current at multiple sites and duration of death to be within 36 to 72 hours since postmortem. The circumstantial evidence and the crime scene



evidence should be considered. The autopsy was conducted on 1.5.2021 at 3:30 PM. The death occurred during summer. Article A3 shows presence of a cooler in the room from which the dead body of Dr. Neeraj Pathak was recovered. As per jurisprudence of Modi, the rate of putrefaction enhances with humid conditions as moisture and humidity are enhancers. No such putrefaction was found on the dead body and, therefore, the death of Dr. Neeraj Pathak being shown to have taken place within 36 to 72 hours prior to the time of postmortem is not corroborated from the condition of the dead body.

11. The appellant submits that the prosecution's story is based on the circumstantial evidence and the medical evidence. Dr. Neeraj Pathak had taken voluntary retirement due to his illness on 1.2.2019 after serving for about 39 years as Government doctor. She too had served with distinction in the Education Department for 36 years. It is alleged that on 29.4.2021, she had given electric shock to Dr. Neeraj Pathak so to cause his homicidal death but the chain of circumstances is not complete to implicate the appellant.

12. The Merg Intimation No.26/21 was recorded under Section 174 of the Cr.P.C by the Sub Inspector Pramod Rohit (PW.3) on 1.5.2019. He had prepared Shav Panchinama. There was white colour bandage on his forehead.



There were red colour patches on the side of left hand. The deceased had an old injury mark on his wrist. The palm was black & blue. On the right arm, there were reddish bluish patches. On the left knee, there was old abrasion wound so also below right knee. Both the soles of feet had reddish bluish patches on his body.

13. The prosecution examined fourteen witnesses, marked twenty-three exhibits and nineteen material objects whereas the defence examined five witnesses and adduced fifty-two exhibits in the evidence.

14. The appellant submits that a case of circumstantial evidence is to be seen in the light of the law laid down by the Apex Court in **Sharad Birdhichand Sarda versus State of Maharashtra (1984) 4 SCC 116**. Another leading judgment on the subject is from Assam High Court whereby a Division Bench of the Apex Court in **Sujit Biswas versus State of Assam (2013) 12 SCC 406** has discussed the aspect of circumstantial evidence. (Para 14)

15. The appellant submits that from the First Information Report (Exhibit P/18), the Postmortem Report (Exhibit P/1), the Memorandum and recovery of Articles under Section 27 of the Indian Evidence Act, 1872, the Weapon of Offence, the FSL report, the motive and theory of last seen together do not fulfil the requirement of burden of proof under Section 106 of the Indian



Evidence Act, 1872. Since the chain of circumstances is not fully established and being unreliable, it does not complete chain to prove the guilt of the appellant with the alleged crime.

16. The appellant submits that there is delay of five days in lodging of the First Information Report and that will vitiate the case of the prosecution. The intimation of death of Dr. Neeraj Pathak was received at Police Station on 1.5.2021 at 10:26 AM but the First Information Report was lodged on 6.5.2021 at 12:54 PM for the offence under section 302 of I.P.C against an unknown person. No reason is assigned for delay in lodging of the First Information Report. The First Information Report does not contain signatures of the Officer-In-Charge of the Police Station.

17. In support of her contention, the appellant places reliance on the judgment of the Apex Court in **Lalita Kumari versus Government of Uttar Pradesh & Others (2014) 2 SCC 1** wherein it is held that it is a mandatory duty cast upon the Police Officials to register an FIR once the report or complaint discloses a cognizable offence. The appellant also places reliance on the judgment of the Apex Court in **Harilal etc versus State of Madhya Pradesh (Now Chhattisgarh) 2023 SCC Online 1124**.



18. The appellant submits that the copy of First Information Report was not sent to the concerned Court at all and, therefore, no date and time of dispatch of the First Information Report to the concerned Court is mentioned. The receipt of copy of the First Information Report by the Local magistrate was not included in the Charge Sheet, which is violation of Section 157(1) of the Cr.P.C. With regard to delay in transmitting the First Information Report to the concerned Court, the appellant places reliance on the judgment of the Apex Court in **Chotkau versus State of Uttar Pradesh (2023) 6 SCC 742**.

19. The appellant submits that in the postmortem requisition, the investigating officer has given information that the death appears to be due to unknown cause. There is major negligence in postmortem examination. Firstly, the dead body was not identified by any relative before starting the postmortem and secondly, Dr.Mukul Sahu (PW.1) deposes in his examination-in-chief that the mouth of the dead body was closed, which is absolutely impossible and unreliable finding and indicative of negligence in the postmortem examination because after death within 2-3 hours, due to primary muscular relaxation, the lower jaw falls and the mouth opens, which is an irreversible change. In support of the aforesaid contention, reference is made



to Modi's Textbook of Medical Jurisprudence and Toxicology, 25th Edition, Page 341, Para 393.

20. The appellant submits that the finding of Dr.Mukul Sahu (PW.1) is contrary to the deposition of Pramod Rohit (PW.3), who states in his examination-in-chief that the mouth was semi open. As per Lash Panchama (Exhibit P/6), the teeth were visible, which are supported by the photographs (Exhibits A4 to A18) and, therefore, the finding of Dr.Mukul Sahu (PW.1) is perverse.

21. The appellant submits that the postmortem report is not reliable inasmuch as the facts documented in the postmortem report are not consistent with the opinion drawn regarding the cause and duration of death. Though a team of three doctors conducted the postmortem but only one doctor was examined as a prosecution witness.

22. The appellant submits that she had filed an application under Section 311 of the Cr.P.C for calling remaining doctors to prove some facts of postmortem report but opportunity was not given to her and that has vitiated the case. However, it is admitted that when the appellant had filed an application under Section 482 of the Cr.P.C before the Hon'ble High Court then that application was dismissed vide order dated 23.4.2022.



23. The appellant points out that duration of death is mentioned as 36 to 72 hours since postmortem. However, certain changes like rigor mortis, lividity (hypostatises) and decomposition are not supported with the Standard Textbook of Medical Jurisprudence and Toxicology. In the postmortem report, the rigor mortis passed off but in absence of concomitant decomposition changes, the aforesaid finding cannot be relied upon to estimate the duration of death. During summer in Northern India, decomposition commences before rigor mortis has completely passed off.

24. The appellant points out that there are two characteristic features of decomposition, namely, change of colour of the body and formation of foul smelling gases but they have not been reported in the postmortem report. There was no Air Conditioner in the bedroom in which the deceased Dr. Neeraj Pathak was lying, a room on the first floor. An indoor Cooler is visible in the photograph. Thus, humidity due to indoor Cooler will accelerate decomposition. The autopsy surgeon Dr. Mukul Sahu (PW.1) and Pramod Rohit (PW.3) reported lividity or red/red blue spots on different parts of the body, which are indicative of the death within 6 to 12 hours and that is not a case of the prosecution. Reference is made to the **Modi's Textbook of**



Medical Jurisprudence and Toxicology, 25th Edition, Page 339, Para 4, Line 17 to 26.

25. The appellant submits that the finding of internal organ as healthy and congested does not support the duration of death. Reliance is placed on the **Essentials of Forensic Medical and Toxicology, 35th Edition by K.S.Narayan Reddy and O.P.Murty, Page Nos.124-125.** She also draws attention of this Court towards the testimony of Dr.D.S.Badkur (DW.2) to support her contention that it is not possible to differentiate between antemortem and postmortem electrical burns referring to the **Essentials of Forensic Medical and Toxicology, 35th Edition by K.S.Narayan Reddy and O.P.Murty Page No.256.** The distinction between electric burn mark and thermal burn mark is not possible. It can only be made by acro reaction and scanning electron microscopy from the deposition of metal particles into the skin/tissue but no such attempt was made.

26. The appellant points out that Dr.Mukul Sahu (PW.1) states that there was exit wound of electric current over scrotum, which is impossible because exit mark will appear when the body was earthed or grounded. Since the deceased was lying on a wooden bed with mattresses and bed sheet and his feet were kept on a plastic chair, all the material i.e.wood, plastic and clothes being non-



conductors of electric current, there was no earthing and no possibility of any harm from the electric shock. Reliance is placed on the **Textbook of Forensic Medicine and Toxicology by Krishna Vij, 6th Edition, Page 165.**

27. The appellant points out that Dr.Mukul Sahu (PW.1) states that there was cotton bandage on the forehead under which there were two stitches, which were at least 7 to 8 days' old but no investigation was carried out as to who stitched the wound and how & under what circumstances, they were contacted. The forensic expert did not seal the room from where the dead body was recovered. There was no blood or any skin found around the bed. There was no reason for her husband succumbing to electric shock as the house was equipped with MCBs and RCCB's, which would have tripped on leakage of current within 1/50 second. To support the aforesaid contention, the appellant draws attention of this Court to the cross-examination of herself and that of Munnilal Kushwaha (DW.4), who had carried out the electric maintenance in the house.

28. The appellant points out that there is glaring error inasmuch as the scene of crime was not examined by the Scientific Officer of the Forensic Science Laboratory or by some qualified or competent Electrical Expert for evaluation of circumstances of the alleged fatal electrocution. Hence, in the light of the



judgment rendered in **Nagendra Sah versus State of Bihar (2021) 10 SCC 725**, the postmortem report alone cannot be the sole basis of conviction for the offence under Section 302 of the I.P.C.

29. The appellant points out that even the electric switchboard has not been shown in the Spot Map though the cause of death is shown as electrocution. The Spot Map was faulty as it failed to show two staircases in open gallery and the patient waiting hall leading to the Private Clinic of Dr. Neeraj Pathak. Thus, placing reliance on Paragraph No.3 of the judgment of the Apex Court in **Shingara Singh versus State of Haryana & Another (2003) 12 SCC 758**, the appellant submits that the Spot Map without essential feature cannot be relied upon to arrive at any conclusion.

30. The appellant points out that Malkhan Singh (PW.7) carried out photography and videography of the dead body of the deceased and the postmortem but no certificate was produced under Section 65B of the Indian Evidence Act, 1872. Malkhan Singh (PW.7) did not produce the memory card as primary electronic evidence and later a certificate under section 65B was produced but since it was not countersigned by the Scientific Officer of the Forensic Science Laboratory Unit, it has no relevance in the eyes of law. The DVD (Exhibit A-19) containing video recording of the postmortem when was



played in the Trial Court was found to be empty as is mentioned in the order sheet dated 20.5.2022. The witnesses of seizure Exhibits P/12 and P/13 were not examined, therefore, whole trial was vitiated.

31. On merged inquest report, her signatures were obtained under duress and they are not admissible in evidence. There are certain other discrepancies like Lash Panchyatnama. There is overwriting in the date. The police had not seized the bed sheet on which deceased Dr. Neeraj Pathak was lying but had only seized some medicine and a typed letter under a seizure memo Exhibit P/4. Her son Nitish, who was available in the Police Station on 7.5.2021 was not examined. There is doubt as to the seizure and, therefore, the seizure of letter (Exhibit A1) is indicative of deep conspiracy against the appellant.

32. At the time of recording of the memorandum (Exhibit P/14) under Section 27 of the Indian Evidence Act, 1872 at 11:00 AM dated 8.5.2021, she was not in custody as she was arrested at 13.10 hours on 8.5.2021 vide Exhibit P/17, therefore, she being not in police custody, that memorandum is not admissible in evidence.

33. As per Seizure Memo (Exhibit P/15), the recovered articles were not hidden but were kept on the makeup box near the bed inside the same house where Dr. Neeraj Pathak passed away, therefore, even that discovery is not



admissible under Section 27 of the Indian Evidence Act, 1872. Bilal Khan (PW.9) and Mohammad Shamim (PW.10), witnesses of seizure, could not even answer about the directions of entrance gate of the house and that vitiates their testimony.

34. Mohammad Shamim (PW.10) is a relative of policeman and, therefore his testimony is not admissible so also the testimony of Bilal Khan (PW.9) is not admissible being in violation of section 100(4) of the Cr.P.C. There is no link of allegedly discovered articles with the death of Dr. Neeraj Pathak so to connect the appellant with the alleged crime.

35. The Olanzapine is not a sleeping tablet. The Forensic Science Laboratory Officer did not report as to how much quantity of Olanzapine-10 Tablet was found in the visceral organ of the deceased. Exhibit P/23 is the Forensic Science Laboratory Report of the alleged electric wires but since no part of the electric wires was without insulation, therefore, no fatal current could have been transmitted through a fully insulated wire. There is no finding of metallization, which is a specific feature of electric injury. Hence, Reliance is placed on the judgments rendered in **Rajesh and Another versus State of Madhya Pradesh AIR 2023 SC 4759 Para 24, 25, 26, 28 and 29** and



Allarakha Habib Memon & Others versus State of Gujarat (2024) 9 SCC 546. Para 44 & 45.

36. The appellant submits that there are contradictions regarding the colour and length of the electric wire, which is alleged to be used as weapon of offence. Bilal Khan (PW.9) states that the length of the electric wire was about 10 to 11 feet and its colour was black whereas another seizure witness Mohammad Shamim (PW.10) states that the length of the electric wire was 9 to 10 feet and its colour was white. The Investigating Officer Jagatpal Singh (PW.14) states that the length of the electric wire was 11 meter and the wire was criss-crossed and was in two colours red and black. The Investigating Officer Jagatpal Singh (PW.14) did not obtain the finger prints on the cut wire and the DVR to find out the person as to who had cut the wires.

37. Reliance is placed by the appellant on the judgments of the Apex Court in **Laxman Prasad Alias Laxman versus State of Madhya Pradesh (2023) 6 SCC 399** and **Krishan versus State of Haryana 2024 SCC Online (SC) 70.**

38. Another discrepancy, which is pointed out by the appellant is that the recording of C.C.T.V cameras were viewed on computer screen in the Court but no evidence was found regarding the death of Dr.Neeraj Pathak against



the appellant. The C.C.T.V cameras are installed on the upper floor of the house and allow the views of the empty area around the house and the C.C.T.V display screen can be turned on and off through switches and, therefore, the aforesaid recording is not reliable.

39. The appellant submits that there is no motive and the false allegations have been made against her that she was residing separately from her husband for sometime. There was no dispute between the appellant and her husband. In support of the aforesaid, she places reliance on certain photographs (Exhibits D4, D18 & D48).

40. The appellant submits that the prosecution has falsely implicated her overlooking the fact that her elder son Nitish Pathak was also at home and he did not observe anything obnoxious or foul about the conduct of the appellant. She had no motive and the only interest she has is to serve her elder son Nitish Pathak, who was unwell but admits that with medicines and some extra care, his health and behaviour was 95% normal. In this regard, the appellant places reliance on the judgment of the Apex Court in **Shivaji Chintappa Patil versus State of Maharashtra (2021) 5 SCC 626. Para 29, 30, 32.**

41. The appellant submits that the theory of last seen as propagated by the prosecution is also of no relevance as the appellant was married to Dr. Neeraj



Pathak since 11.5.1984. She was residing alongwith her son Nitish Pathak on the ground floor while her husband was residing on the first floor as he was having some symptoms like corona. The first floor is connected by two staircases connecting the first floor to an open gallery and the patient waiting hall of Dr.Neeraj Pathak's private clinic. The clinic was opened and operated by 7 to 8 persons including the laboratory personnel and the medical store personnel etc. The appellant had a conversation at about 9:30 PM on 30.4.2021 and Dr.Neeraj Pathak was not responding at about 7:00 AM on 1.5.2021 while in his bed. There was a gap of about 10 hours of night in between and, therefore, the theory of last seen will not be applicable because of the time gap of 10 hours. Section 106 of the Indian Evidence Act, 1872 will not relieve the prosecution from establishing the guilt of the appellant beyond all reasonable doubts. In this regard, the appellant places reliance on the judgment of the Apex Court in **Gargi versus State of Haryana (2019) 9 SCC 738. Para 28.1 & 28.3** as well as the judgment of the Apex Court in **State of Madhya Pradesh versus Phoolchand Rathore 2023 SCC Online SC 537. Para 24.**

42. The appellant submits that the actual cause of death of Dr.Neeraj Pathak was his old age, which was 65 years. His death occurred in the intervening



night of 30th April and 1st May when there was second wave of Covid-19 at its highest peak. Dr.Mukul Sahu (PW.1) had sent the sample of RTPCR corona test as admitted by him in Paragraph No.3 of his examination-in-chief but that report was not submitted before the Trial Court whereas Dr.Neeraj Pathak was suffering from symptoms like corona and was in home isolation. The actual cause of death was due to narrowing and calcification of coronary arteries due to old age but the autopsy surgeon did not open the coronary arteries and did not report the conditions of the blood vessels of Dr.Neeraj Pathak.

43. The appellant submits that Dr.Neeraj Pathak was a patient of High Blood Pressure and his TMT was positive in the year 2007. The fatal subdural haematoma may occur in older people even after a minor head injury because it is pointed out that Dr.Neeraj Pathak due to slipping could have sustained such haematoma as pointed out by Dr.Mukul Sahu (PW.1) but no CT scan was carried out to verify the cause of such subdural haematoma.

44. The appellant submits that Chhandilal Bajpai (PW.4) gave false and fabricated deposition. Chhandilal Bajpai (PW.4) states that he had two telephonic conversations with Dr.Neeraj Patak on 29.4.2021. He had recorded those conversations and compiled them in a pen drive, which was handed over to the Police but none of the witnesses of seizure have testified the same.



Ashish Bajpai was not examined whereas Mohammad Shamim (PW.10) denied twice for being the witness of the alleged pen drive.

45. The appellant submits that Chhandilal Bajpai (PW.4) had neither given his mobile from which recording was made nor the mobile of her husband was seized and there being no certificate under Section 65B(4) of the Indian Evidence Act, 1872 with the alleged pen drive, which was the secondary electronic evidence, the aforesaid evidence is not admissible in the eyes of law and, therefore, the authenticity of the pen drive is doubtful. In this regard, reliance is placed on the judgment of the Apex Court in **Arjun Pandit Rao Khotkar versus Kailash Kushanrao Gorantyal & Others (2020) 7 SCC 1.Para 14 and 59.**

46. The appellant submits that there were several lapses in investigation like the Investigating Officer Jagatpal Singh (PW.14) prepared unscaled spot map, which did not even show the electric switchboard, two staircases connecting the first floor to an open gallery and a hall of Dr.Neeraj Pathak's private clinic. No seizure was made from the room where Dr.Neeraj Pathak passed away. No investigation was carried out by the Forensic Science Laboratory Officer or the Electrical Engineer/Expert. The pillow cover and bed-sheet were not sealed. Copy of the First Information Report was not transmitted to



the concerned Court. The mobile of Chhandilal Bajpai (PW.4) was not seized. The date of arrest of the appellant was not recorded besides not checking the C.C.T.V footage. There is no explanation as to why Malkhan Singh (PW.7) had given photographs and videography after thirteen days. There was no evidence that the appellant purchased Olanzapine tablets and electric wire. The finger prints were not examined. The Covid RTPCR report was not taken. The residents of the house were not examined and this all will vitiate the proceedings in the light of the judgment of the Apex Court in **Maghavendra Pratap Singh @ Pankaj Singh versus State of Chhattisgarh 2023 SCC Online (SC) 486. Para 19 and 39.** Thus, pointing out so many lacunas in the investigation and pleading her innocence, the appellant submits that she has been falsely implicated in this case. Hence, prayer is made to set aside the impugned judgment of conviction and acquit her from the charge of Section 302 of the I.P.C.

47. Shri Surendra Singh, learned Senior Counsel for the appellant places reliance on the judgment of **Ramesh Chandra Agrawal versus Regency Hospital Limited & Others AIR 2010 SC 806. Para 14 & 17** to support the submission that Dr.Mukul Sahu (PW.1), who had conducted the postmortem on the body of deceased Dr.Neeraj Pathak had not given any opinion on the



duration of death. Mere presence in the house is not sufficient to hold somebody guilty and in support of the aforesaid contention, the judgment of the Apex Court in **Mulak Raj & Others versus State of Haryana (1996) 7 SCC 308** is relied upon.

48. Learned Senior Counsel for the appellant submits that the absence of the certificate under Section 65B of the Indian Evidence Act, 1872 is dealt with in **Arjun Pandit Rao Khotkar versus Kailash Kushanrao Gorantyal & Others (supra)**.

49. Learned Senior Counsel for the appellant submits that the appellant was in joint possession of the house. The appellant's elder son Nitish Pathak was living with her and, therefore, it cannot be said that the recovery is on exclusive identification of the appellant. He places reliance on the judgment of the Apex Court in **Prem Singh versus State (NCT of Delhi) (2023) 3 SCC 372. Para 43** to contend that even her son could have done it. There was no motive and since the testimony of Chhandilal Bajpai (PW.4) is not corroborated, therefore, the appellant is liable to be acquitted from the charge of Section 302 of the I.P.C.

50. Shri Manas Mani Verma, learned Government Advocate for the State submits that in the FSL report (Exhibit P/21), the results for presence of



Olanzapine (Benzodiazepine) medicine were found to be positive on Article-A&B containing visceral material of Dr.Neeraj Pathak and Article-D, which was said to be a wrapper of 10 tablets on which Oleanz-10 is printed. Six tablets were found intact and four tablets were absent. No chemical poison was found in the preservative Article-C. The presence of Cooler shown in the photograph Articles-1 to 18 will slow down the state of decomposition.

51. Reading from the testimony of Munnilal Kushwaha (DW.4), learned Government Advocate for the State submits that Munnilal Kushwaha (DW.4) admitted preparing the Certificate Exhibit D/2 at the instance of the appellant. Munnilal Kushwaha (DW.4) admits in his cross-examination that after current is given, RCCBs will fall and it can be restarted. Thus, reading from the testimony of Munnilal Kushwaha (DW.4), learned Government Advocate submits that minor discrepancies will not adversely affect the case of prosecution, which has been proved very meticulously. There is evidence of last seen. There is a motive and also the fact that the appellant tried to camouflage her presence by going to Jhansi without any purpose as is admitted by her driver Ratan Singh Yadav (PW.12), who admits that on way to Jhansi, when they reached Alipura, Smt.Mamta Pathak asked him to take her to Harpalpur where she had given a bag to her mother. Thereafter, they



had reached Jhansi at about 1:00 PM but though she had stated that she has to undergo dialysis at Jhansi but as the clinic of Dr.P.K.Jain could not be traced, she did not collect her corona test report and no dialysis was performed on Smt.Mamta Pathak. He had brought her back to Chhatarpur alongwith her son Nitish Pathak and left them at Chhatarpur.

52. Learned Government Advocate for the State submits that Chhandilal Bajpai (PW.4) has proved that on 29.4.2021, Dr.Neeraj Pathak had called him at about 11:51 AM informing him that Smt.Mamta Pathak was torturing him and had closed him in the bathroom. She had not given any food to him for 2 to 3 days. She had pushed him in the bathroom, as a result of which, he had sustained injuries. She had broken his almirah and taken out cash, ATM, keys of the vehicle and other material like FD etc and had kept them with herself. Dr.Neeraj Pathak had requested to free him after contacting the Police. His son Ashish had contacted his another friend Arvind Pateriya, who had asked the T.I. of Police Station Civil Line to help Dr.Neeraj Pathak. The police personnel had freed Dr.Neeraj Pathak from the custody of Smt.Mamta Pathak and had put a photograph of Dr.Neeraj Pathak on the mobile phone of Arvind Pateriya and that photograph in turn was sent on the mobile phone of Ashish S/o.Chhandilal Bajpai (PW.4). He had seen a bandage on the forehead of



Dr.Neeraj Pathak. At 12:54 PM, Chhandilal Bajpai (PW.4) had called Dr.Neeraj Patak and asked him as to whether he had come out or not then Dr.Neeraj Pathak confirmed that he was freed.

53. Learned Government Advocate for the State points out that when the seizure of pen drive is proved; played in the open Court and after it being played, the Laptop was closed and Article-A2 pen drive was sealed in an envelope and this was done at the time of the cross-examination then the appellant's counsel having right to question the validity of the conversation and having failed to do so, the appellant is not entitled to raise objection on technical grounds now.

54. Learned Government Advocate for the State submits that the Trial Court in Paragraph No.4 has clearly recorded a finding that in the Government Laptop of the Court, seized pen drive was opened and played. There were two audio-feeds in the pen drive, which were played in front of the parties present in the Court wherein Chhandilal Bajpai (PW.4) admitted that it was the conversation, which was recorded between him and Dr.Neeraj Pathak at 11:51 and 11:54 or 11:59.

55. Learned Government Advocate for the State places reliance on the judgment of the Apex court in **Bodhraj Alias Bodha & Others versus State**



of Jammu & Kashmir (2002) 8 SCC 45 to contend that the evidence of last seen comes into play where the time gap between the point of time when the deceased and the accused were seen last alive and when the deceased is found dead, is so small then possibility of any person other than the accused being the author of the crime becomes impossible. Some delay in sending the FIR to the Magistrate, if properly explained, did not have substance. The conviction can be held solely on the circumstantial evidence, however, it should be tested on the touchstone of law relating to circumstantial evidence as has been laid down by the Apex Court in **Hanumant versus State of Madhya Pradesh (1952) 2 SCC 71**. Since the chain of circumstances is complete, the conviction of appellant does not call for any interference.

56. Learned Government Advocate for the State places reliance on the judgment of the Apex Court in **Sushil Kumar versus State of Punjab (2009) 10 SCC 434** wherein it is held that some minor discrepancies, which are bound to appear in natural course of conduct of a normal human being and there being no serious material discrepancies in the testimony of the prosecution witness, there arises no reason to doubt the credibility of the prosecution witnesses. No reason has been assigned as to why they would falsely try to implicate the accused. Thus, it is pointed out that the testimony



of prosecution witnesses cannot be doubted especially Chhandilal Bajpai (PW.4) is a close relative to Smt.Mamta Pathak and she being niece of Chhandilal Bajpai (PW.4).

57. After hearing learned counsel for the parties and going through the record, if we summarise the arguments put forth by learned counsel for the appellant and the appellant Smt.Mamta Pathak in person, it is evident that arguments can be summarized in the following points, namely:-

(i) There was not only delay in recording the First Information Report, but the copy of the FIR was not transmitted to the concerned Magistrate in time.

(ii) The memorandum was not obtained in custody and her signatures on the inquest report were obtained on 7th May.

(iii) There are several lapses in the postmortem report including recording of finding of mouth of the dead body being closed and also with regard to the cause of death and the duration of death besides the aspect of non-conduct of chemical examination and electron microscopy to find out the deposition of metal particles into the skin and tissue. The house was wholly insulated and that there was no possibility of completion of the



circuit so to say that the death was caused due to the electric shock.

(iv) Dr. Neeraj Pathak was suffering from cardio vascular disease and, therefore, his death is on account of such cardio vascular rather than anything else.

(v) The evidence, both oral and electronic, is not corroborated so to point out that the guilt is that of the appellant alone and nobody else. It is a case of circumstantial evidence and chain of circumstances is not complete, therefore, guilt of the appellant cannot be said to be established.

(vi) Once these aspects are taken into consideration, then appellant's reliance on the material submitted by her is to be tested against each of the points.

58. The first issue, which is raised by the appellant with regard to delay in lodging of the FIR and not transmitting the copy of the FIR to the Court in time. As far as the delay in lodging of the FIR is concerned, as per the prosecution story supported with the postmortem report, the death occurred on 29.4.2021, a fact which is corroborated by Chhandilal Bajpai (PW.4) that on 29.4.2021, he had received a call from Dr. Neeraj Pathak at 11:51 AM



complaining about torture being made by Smt.Mamta Pathak by closing him in the bathroom and not providing him food for last 2 to 3 days. It is also alleged that she had given a push to him after putting him in the bathroom, as a result of which, he had sustained injuries. Thereafter, Chhandilal Bajpai (PW.4), had called the concerned police personnel of Civil Lines Chhatarpur through his son Ashish and in turn his friend Arvind Pateriya had freed Dr. Neeraj Pathak. There is evidence to the effect that at 12:54 hours, he had called Dr.Neeraj Pathak, who informed him that he was freed from the confinement. Chhandilal Bajpai (PW.4), states that on 29.4.2021 at 7:05 PM, he had called Dr.Neeraj Pathak but that was not answered.

59. It is an admitted fact as deposed by Ratan Singh Yadav (PW.12) that on 30.4.2021, at about 6:00 AM, Smt.Mamta Pathak had called him and asked him to take her to Jhansi where she wanted to meet a doctor in relation to her dialysis. Ratan Singh Yadav (PW.12) admits that neither any dialysis was performed nor she could even trace Dr.P.K.Jain, with whom she wanted to carry out dialysis and in the morning on way to Jhansi had given a bag to her mother at Harpalpur and then they had returned to Chhatarpur in the night and after parking her car, he had gone back to his house. Choukidar Dhaniram Ahirwar (PW.2) had asked him about the return of Smt.Mamta Pathak and had



informed Dhaniram Ahirwar (PW.2) that the madam alongwith her son Nitish had returned back. It has also come on record that Smt.Mamta Pathak had taken her son Nitish Pathak and had visited Jhansi on 30.4.2021.

60. Dhaniram Ahirwar (PW.2) admits that he was working as a Choukidar for last 10 to 12 years in the house of Dr.Neeraj Pathak. The elder son of Dr.Neeraj Pathak had informed him that his father is no more. This intimation was received by him at about 8:00 AM on 1.5.2021. The Merg (Exhibit P/8) was recorded on 1.5.2021 at 10:26 AM by Promod Rohit (PW.3) wherein it is mentioned that the dead body of Dr.Neeraj Pathak was found in his house. Since the word 'Complainant' is written in Hindi/Urdu with gender connotation of it being recorded by a female, it indicates that it was recorded at the instance of the appellant.

61. In the Merg Intimation (Exhibit P/8) itself, it is mentioned that probable weapon used is unknown and it is not a case of suicide. In Column 12 of Merg Intimation, it is mentioned that Complainant Smt.Mamta Pathak, W/o. Dr.Neeraj Pathak, aged about 63 years, Mobile No.7974831947, visited the police station and informed that her husband Dr.Neeraj Pathak S/o Late Shri Chintamani Pathak, was lying in his room on 29.4.2021 when she had gone to his room to ask for food. It is mentioned that Dr.Neeraj Pathak was lying on



his bed, but did not reply to the request for food and thereafter the complainant/appellant herself informed that when she had checked his pulse, it was not available and he had died. She got afraid as Dr. Neeraj Pathak was suffering from fever for last 7 of 8 days. On 30.4.2021 at 8:00 AM, she had taken her elder son Nitish Pathak in a private vehicle alongwith the driver Ratan Singh Yadav (PW.12) for investigation and treatment at Jhansi and returned at 9:30 PM. The appellant states that she had come to the police station on 1.5.2021 for reporting the matter. She does not know as to how her husband died.

62. The Merg Intimation (Exhibit P/8) is duly signed by the appellant Smt. Mamta Pathak and her signatures are from B to B part and thereafter the Merg Investigation commenced. The postmortem was conducted. The FIR (Exhibit P/18) was lodged by one Jagatpal Singh (PW.14) against an unknown person narrating the fact, which includes that on 29.4.2021 when Dr. Neeraj Pathak was lying in his room on the first floor then at about 09:00 PM, the appellant had gone to his room to ask for the food but Dr. Neeraj Pathak was lying on his bed and did not reply and when she had checked his pulse then she found it to be stopped. She became upset as he was suffering from fever for last 7 to 8 days and also the appellant and thereafter without giving



intimation to anybody, she had gone to Jhansi on 30.4.2021, returned from Jhansi to Chhatarpur at 9:30 PM and then on 1.5.2021, she had given intimation as contained in Exhibit P/8. On one hand, the appellant contends that the delay of 5 days in lodging of the report is fatal and on the other hand, she states that intimation with regard to lodging of the FIR was not sent to the Court promptly.

63. Jagatpal Singh (PW.14), who was working as Incharge Station House Officer at Police Station Civil Lines, District Chhatarpur on 6.5.2021 states that he had received Merg Case Diary No.26/21 on the basis of which, he had lodged an FIR pertaining to Crime No.288/21 for the offence under Section 302 of I.P.C against an unknown accused as contained in Exhibit P/18. During investigation, he had prepared the Spot Map (Exhibit P/2) as per the identification of Dhaniram Ahirwar (PW.2) and thereafter the statement of Dhaniram Ahirwar (PW.2) was recorded. On 7.5.2021, Chhandilal Bajpai (PW.4) had produced 16-GB Pen Drive of Sandisk Company, which was seized vide Exhibit P/9 and thereafter the statements of Chhandilal Bajpai and Ratan Singh Yadav were recorded.

64. On 8.5.2021 at about 11:00 AM, the appellant Smt.Mamta Pathak had given her memorandum admitting that she had given an electric current to her



husband after making him consume Olanzapine Tablets on the basis of which, the memorandum Exhibit P/14, one strip of Olanzapine Tablet was seized. The strip contained only 6 tablets and 4 were empty. Similarly, Smt.Mamta Pathak had given an electric wire of red and blue colour, which had a two pin plug on the one end and another end was naked measuring about 11 meters. So, two issues are explained through this material, one that since the merg was recorded against an unknown person, its investigation was carried out and the file was received by Jagatpal Singh (PW.14) on 6.5.2021, when he had recorded the FIR. Hence, it cannot be said that there was any inordinate delay in lodging of the FIR because the FIR was lodged only after completion of the merg investigation.

65. As far as the law laid down by the Apex Court in **Lalita Kumari versus Government of Uttar Pradesh & Others (supra)** is concerned, it says that, it is mandatory for the police officer to record FIR, in case a cognizable offence is reported. However, it further says that, wherever, information received does not disclose a cognizable offence, a preliminary enquiry may be conducted to ascertain the cognizable offence is disclosed or not. It further says that the scope of preliminary enquiry even when permissible in limited classes of cases is not to verify the veracity or otherwise of the information



received but only to ascertain whether the information reveals any cognizable offence. It further says that a preliminary enquiry should be time bound and in any case it should not exceed seven days. When these facts are taken into consideration then looking to the ratio of law laid down by the Apex Court in Paragraph No.120.6 of **Lalita Kumari versus Government of Uttar Pradesh & Others (supra)**, which clearly provides that in cases of matrimonial disputes/family disputes, a preliminary enquiry is to be conducted depending on the facts and circumstances of the case and then in Paragraph No.120.7, seven days time is granted to carry out such preliminary enquiry then it cannot be said that there was any delay in lodging of the FIR.

66. As far as sending of copy of the FIR to the Magistrate is concerned, it is evident from the record of the Trial Court especially one of committal of the case to the Court of Sessions made by the Chief Judicial Magistrate, Chhatarpur that he had received a copy of the FIR on 6.5.2021 through Constable No.1070 Shri Vinod Prajapati and the aforesaid endorsement bears seal and signatures of the JMFC, Chhatarpur. The judgments of the Apex Court in **Chotkau versus State of Uttar Pradesh (supra)** and **Harilal etc versus State of Madhya Pradesh (Now Chhattisgarh) (supra)** on this aspect will have no application.



67. The appellant places reliance on the judgment of the Apex Court in **Lalita Kumari versus Government of Uttar Pradesh & Others (supra)** so also the judgment of the Apex Court in **Harilal etc versus State of Madhya Pradesh (Now Chhattisgarh) (supra)**. The ratio of law laid down in **Lalita Kumari versus Government of Uttar Pradesh & Others (supra)** is that if a cognizable offence is reported then the FIR should be immediately recorded. In **Harilal etc versus State of Madhya Pradesh (Now Chhattisgarh) (supra)**, the Apex Court has held that “the delay in FIR cannot be ignored. When an FIR is delayed in absence of proper explanation, the Court must be on guard and test the evidence meticulously to rule out possibility of embellishments in the prosecution story, inasmuch as the delay gives opportunity for deliberation and guess work. More so, in a case where probability of no one witnessing the incident is high, such as in a case of night occurrence in an open place or a public street.” It is thus clear that the ratio of law is that if an incident takes place in night in an open place, then delay in lodging of the FIR may leave a scope for manipulation especially the place is an open place or a public street.

68. As far as the delay in lodging of the FIR is concerned, firstly, the Merg Intimation was registered vide Exhibit P/8 and it contains the signature of the



appellant Smt.Mamta Pathak. The object of inquest proceeding is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death?

69. Admittedly, the postmortem was conducted on 1.5.2021 and its report is Exhibit P/1 wherein it is mentioned that the cause of death is shock due to cardio respiratory failure as a result of electric current at multiple sites. Duration of death is within 36 to 72 hours since postmortem. It is also mentioned that circumstantial evidence and crime scene evidence should be considered.

70. It has come on record that the Merg Intimation was carried out and Inquest Merg Investigation Report was furnished to the Investigating Officer Jagatpal Singh (PW/14) on 6.5.2021 and thereafter the FIR was lodged. The law in this regard is well settled that every delay in lodging of the FIR is not fatal.

71. In **Tara Singh & Others versus State of Punjab AIR 1991 SC 63**, it is held by the Apex Court that “the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Unless there are indications of fabrication. The Court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay.”



72. In **Amar Singh versus Balwinder Singh & Others AIR 2003 SC 1164**, it is held by the Apex Court that “there is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR, which may cast doubt about the veracity of the prosecution case and for this host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc, have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either merely on account of delay in lodging of the FIR.”

73. In the present case, the FIR (Exhibit P/18) is recorded on the written information received from the complainant Smt.Mamta Pathak given on 1.5.2021. The Inquest (Exhibit P/8) is duly signed by Smt.Mamta Pathak and, therefore, there being only correlation of the circumstances and there being no other fact except what is mentioned in the Merg Report (Exhibit P/8) is mentioned in the FIR then it cannot be said that there was any manipulation in the FIR so to render it as an inadmissible starting point for conduct of investigation.



74. In any case, the ratio of law of **Harilal etc versus State of Madhya Pradesh (Now Chhattisgarh) (supra)** will not be applicable because the incident took place within the house of the appellant and it being neither an open place nor a public street and there was already an admitted delay on the part of the appellant in informing the police authorities regarding the death, which as per her own admission, had taken place on 29.4.2021 itself, when she had seen her husband at 9:00 PM is a circumstance, which is sufficient to hold that lodging of the FIR on 6.5.2021 did not cause any hindrance or interference in the investigation as has been held in **Tara Singh versus State of Punjab (supra)** and **Amar Singh versus Balwinder Singh & Others (supra)** wherein it is observed that the delay in lodging of the FIR is not a mitigating circumstance to discard the prosecution case especially when the Merg Intimation under Section 174 of the Cr.P.C. was recorded on 1.5.2021 by the Complainant-Appellant herself.

75. As far as the appellant's reliance on the judgment of **Chotkau versus State of Uttar Pradesh (supra)** with regard to non-transmission of the FIR to the concerned Court is concerned, in terms of the endorsement that the FIR was forwarded to the J.M.F.C on 6.5.2021 as is available in the original file, no violation of Section 157(1) of the Cr.P.C is made out. The ratio of law in



Chotkau versus State of Uttar Pradesh (supra) is discussed by the Apex Court in Paragraph No.60 in the following terms :-

*“60. On the importance of promptitude, both in the registration of the FIR and in the transmission of the same to the court, reliance is placed by Shri Nagamuthu, learned Senior counsel on the following passage in **Meharaj Singh (L/Nk.) Vs. State of U.P.(1994) 5 SCC 188** :-*

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a



special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 of the Cr.P.C, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been



recorded till the inquest proceedings were over at the spot by PW.8."

76. The Apex Court has held that Criminal Procedure Code provides for internal and external checks; one of them being a receipt of the copy of the FIR by the Magistrate concerned, it serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 of the Cr.P.C, if so required.

77. Thus, it is evident that when the FIR is neither ante-dated nor ante-timed, it is based on Merg Intimation (Exhibit P/8) and there is no allegation of it being ante-timed or ante-dated or manipulated inasmuch as even the name of the appellant is not mentioned in the FIR, much noise without any substance cannot be made so to frustrate the investigation and the consequential proceedings. Hence the aforesaid ground deserves to and is hereby rejected.

78. The second contention of the appellant is that the memorandum was involuntary and hence it would be hit by Article 20(3) of the Constitution of India rendering such a confession inadmissible, is also not made out, inasmuch as Article 20(3) says that no person accused of any offence shall be compelled to be a witness against himself.



79. The protection available is discussed in **Raja Narayanlal Bansilal versus Maneek Phiroz Mistry & Another AIR 1961 SC 29** that the protection of Clause (3) of Article 20 is confined to criminal proceedings or proceedings of that nature before a Court of law or other Tribunal before whom a person may be accused of an offence as defined in Section 3(38) of the General Clauses Act, that is an act punishable under the Penal Act or any special or local law.

80. In **Collector of Customs versus Calcutta Motor and Cycle Company & Others AIR 1958 Calcutta 682** and **Ram Swarup versus State AIR 1958 Allahabad 119**, it is held that all statements made during the stage of investigation or out of Court shall be excluded from the protection of Article 20(3) unless a complaint or FIR has already been made at the time when the statement is obtained from the person by compulsion.

81. The appellant Smt.Mamta Pathak strenuously argues that since her Memorandum (Exhibit P/14) under Section 27 of the Indian Evidence Act, 1872 was recorded at 11:00 AM on 8.5.2021 and she was arrested at 13:10 hours on 8.5.2021, therefore, it is not admissible under Section 27 of the Indian Evidence Act. In this regard, it is held by the Patna High Court in **State of Bihar versus Madanlal Agarwalla & Others AIR 1967 Patna 63** that the



word ‘custody’ in this Section does not mean physical custody by arrest. In **Mussammat Aishan Bibi versus The Crown AIR 1934 Lahore 150(2)**, it is held that as soon as an accused or suspected person comes into the hands of a police officer, he is, in the absence of clear evidence to the contrary, no longer at liberty, and is, therefore, in custody within the meaning of Section 26 & 27 of the Indian Evidence Act.

82. In Paragraph Nos.92 & 93 of **State of Assam Vs. Upendra Nath Rajkhowa** decided by Gauhati High Court on 06th August, 1974 reported in **1975 Cr.L.J 354 (Gauhati)**, the Gauhati High Court held as under:-

“92. In this connection, the following observations of the Supreme Court in AIR 1960 SC 1124 are apposite:

There is nothing in the Evidence Act, which precludes proof of information given by a person not in custody which relates to the facts thereby discovered; it is by virtue of the ban imposed by Section 162 of the Cr.P.C, that a statement made to a police officer in the course of the investigation of an offence under Ch. 14 by a person not in police custody at the time it was made even if it leads to the discovery of a fact is not provable against him at the trial for that



offence. But the distinction which it may be remembered does not proceed on the same line as under the Evidence Act, arising in the matter of admissibility of such statements made to the police officer in the course of an investigation between persons in custody and persons not in custody, has little practical significance. When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody; submission to the custody by word or action by a person is sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer within the meaning of Section 27 of the Indian Evidence Act; **Legal Remembrancer v Lalit Mohan Singh, ILR 49 Cal 167 : (AIR 1922 Cal 342 : 22 Cri. L.J 562),**



Santokhi Beldar v. Emperor, ILR 12 Pat 241 : (AIR 1933 Pat 149) : (34 Cri. L.J 349) (SB).

“Counsel for the defence contended that in any event Deoman was not at the time when he made the statement attributed to him, accused of any offence and on that account also apart from the constitutional plea, the statement was not provable. This contention is unsound. As we have already observed, the expression "accused of any offence" is descriptive of the person against whom evidence relating to information alleged to be given by him is made provable by Section 27 of the Evidence Act. It does not predicate a formal accusation against him at the time of making the statement sought to be proved, as a condition of its applicability.

93. The second requirement of Section 27 of the Evidence Act is that the person giving the information must be accused of any offence. In the instant case when the information was obtained from Rajkhowa, he was an accused in the case against him under Section 309, Indian Penal Code. That apart, in view of the observation of the



*Supreme Court in AIR 1960 SC 1125, we respectfully agree with the following observation of the **Bombay High Court in State v. Memon Mohamad Hussain Ismai** AIR 1959 Bom 534;*

"We are therefore of opinion that the words information received from "a person accused of any offence" in Section 27 cannot be read to mean that he must be an accused when he gives the information but would include a person if he became subsequently an accused person, at the time when that statement is sought to be received in evidence against him.

That being so, the person giving the information in the instant case is found to be an accused of an offence as contemplated under Section 27 of the Evidence Act. In consequence of the aforesaid information received from accused Rajkhowa, the dead bodies of his wife and three daughters were recovered from the compound of the District Judge's residence at Dhubri and the relevant evidence on the point has already been discussed above. The evidence of P.W.46, P.W.49 and P.W.29



goes to show that the dead bodies were discovered in consequence of the information received from accused Rajkhowa, P.W. Kahali has stated in his deposition that on 09-08-1970, he again interrogated Rajkhowa at 7 P.M. and Rajkhowa stated that he had buried the dead bodies of his wife and three daughters on the night of 10-02-1970 and 25-02-1970 with the help of accused Umesh Baishya in the compound of the residence of the District and Sessions Judge, Dhubri and in pursuance of this information, the four dead bodies were recovered as stated hereinabove. The fact of discovery of the dead bodies is relevant to the issues, namely, whether the wife and three daughters of accused Rajkhowa were dead and whether the four dead bodies discovered were the dead bodies of the wife and three daughters of accused Rajkhowa."

83. Even otherwise, Section 46(1) of the Cr.P.C provides that in making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action; Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to



custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

84. When all these aspects are taken into consideration then it is evident that in terms of the law laid down by Patna High Court in **State of Bihar versus Madanlal Agarwalla & Others (supra)** and the Lahore High Court in **Mussammat Aishan Bibi versus The Crown (supra)**, so also the Gauhati High Court in **State of Assam versus Upendra Nath Rajkhowa 1975 Cr.L.J 354 (Gauhati)**, the meaning of words ‘Custody’ and ‘Arrest’ are to be seen in different connotations and in terms of 46(1) of the Cr.P.C, the appellant was already in custody when she gave her memorandum under Section 27 of the Evidence Act and, therefore, it cannot be said that the memorandum or the consequential proceedings are defective because the arrest was made at 13:10 hours while the memorandum was obtained at 11:00 AM. The second issue is answered accordingly that there is no infirmity in recording of the memorandum and the proceedings followed thereafter.

85. In **State of Bombay versus Kathi Kalu Oghad AIR 1961 SC 1808**, **R.K.Dalmia & Others versus The Delhi Administration AIR 1962 SC 1821** and **Preshadi versus State of Uttar Pradesh AIR 1957 SC 211**, it is



held by the Apex Court that if no ‘compulsion’ was used, a statement leading to a discovery under Section 27 of the Indian Evidence Act would be admissible.

86. In the present case, since there is no allegation of any compulsion being used and the appellant is actually using two contradictory arguments, namely, that her memorandum is not admissible being hit by Article 20(3) of the Constitution of India and on the other hand, saying that since the appellant was arrested subsequent to obtaining her memorandum, it being not admissible in the light of the law laid down in **State of Bombay versus Kathi Kalu Oghad (supra)**, **R.K.Dalmia & Others versus The Delhi Administration (supra)** and **Preshadi versus State of Uttar Pradesh (supra)**, the memorandum given under Section 27 of the Indian Evidence Act, being admissible argument that her memorandum is hit by Article 20(3) of the Constitution, is not made out and is liable to and is hereby rejected.

87. The appellant submits that her signatures were forcefully obtained on the Merg Inquest Report at the night of 7th and in support of the aforesaid contention, she places reliance on the testimony of Smt.Mamta Pathak (DW.1) to contend that the signatures were obtained on 7.5.2021. Reliance is also placed on the testimony of Ramdayal Gond (PW.13). Ramdayal Gond



(PW.13) is the person, who had recorded the Merg Intimation No.26/21 (Exhibit P/8) under Section 174 of the Cr.P.C.

88. On a careful perusal of the testimony of Ramdayal Gond (PW.13), it is not made out that he had obtained the signatures of Smt.Mamta Pathak on 7.5.2021. Infact, there is no suggestion given to Ramdayal Gond (PW.13) that he had obtained the signatures of Smt.Mamta Pathak after seven days of recording of the Merg Intimation (Exhibit P/8).

89. As far as appellant's own testimony is concerned, she admits that the police had obtained her signatures under pressure, but she also admits that she is literate and is working as Assistant Professor of Chemistry. Merely saying that her signatures were obtained under pressure and explaining that her signatures were obtained after seven days of recording of the inquest, are two different things and she has very cleverly tried to cover up by saying that the admission which has already come on record in the form of signatures on inquest were obtained under duress after seven days. There is no material to support the aforesaid contention and, therefore, it needs to and is hereby rejected.

90. Infact, a text-book of **Medical Jurisprudence and Toxicology by Modi published by Laxis Nexis Burtterworths Wadhwa, Nagpur**, In Chapter 14



Postmortem Changes and Time Since Death while dealing with the aspect of duration mentions as under:-

“Duration: In temperate regions, rigor mortis usually lasts for two to three days. In northern India, the usual duration of rigor mortis is 24 to 48 hours in winter and 18 to 36 hours in summer. According to the investigations of Mackenzie, in Calcutta, the average duration is 19 hours and 12 minutes, the shortest period being three hours, and the longest forty hours. In general, rigor mortis sets in one to two hours after death, is well developed from head to foot in about twelve hours. Whether rigor is in the developing phase, established phase, or maintained phase is decided by associated findings like marbling, right lower abdominal discoloration, tense or taut state of the abdomen, disappearance of rigor on face and eye muscles. If on examination, the body is stiff, the head cannot be fixed towards the chest, then in all probability, the death might have occurred six to twelve hours or so more before the time of examination.”

It is further noted that “in adolescent and healthy adult bodies, the occurrence rigor mortis is slow, but



well marked, while it is feeble and rapid in the bodies of children and old people". It is also mentioned that, "The onset is slower, and the duration longer in those cases where the muscles have been healthy and at rest before death than in those cases where the muscles have been feeble and exhausted due to prolonged activity and have less amount of glycogen in the muscles. After insulin injections, it develops quickly as the muscle glycogen is depleted". It also depends on several factors "like heat stiffening; cold stiffening; and cadaveric spasm or instantaneous rigor". As far as Heat Stiffening is concerned, "it occurs when the dead body is exposed to intense heat, above 50°C. It is mentioned that heat Stiffening is due to the coagulation of muscle proteins. It persists until putrefaction sets in". It is also mentioned that, "Heat Stiffening is commonly observed in the body of a person who has met his death from burning or from sudden immersion in a boiling fluid, or in a body which has been burnt soon after death or due to high voltage electric shocks from touching a high tension cable".



As far as Putrefaction or Decomposition and Autolysis are concerned, it is mentioned that "India being a vast country, the climatic conditions vary so much in different parts that it is impossible to give the exact time when the putrefactive processes develop in a dead body. The blood acts as a good medium for their growth and spread. The tow characteristic features of putrefaction are the colour changes and the development of foul-smelling gases." For this also different durations have been provided by Modi and when these durations are taken into consideration, then it cannot be said that the duration of death is wrongly mentioned.

91. The third issue, which has been raised by the appellant, is that there are several lapses in the postmortem report including recording of finding of mouth of dead body being closed and also with regard to cause of death, duration of death, besides aspect of non-conduct of chemical examination and electron microscopy to find out the deposition of metals onto the skin and tissue and also her submission that the house was wholly insulated and there was no possibility of completion of the circuit so as to cause death and infact, the death was caused due to cardiac arrest are concerned, the appellant points



out that in the postmortem requisition form, the cause of death is mentioned as unknown secondly, the dead body was not identified by any relative before starting the postmortem.

92. As far as the identification is concerned, in the application for postmortem dated 1.5.2021, it is mentioned that Smt.Mamta Pathak W/o. Dr.Neeraj Pathak had received the dead body after postmortem as admitted by the appellant Smt.Mamta Pathak (DW.1) in Paragraph No.4 of her examination. The crime detail form (Exhibit P/2) contains the signatures of Dhaniram Ahirwar (PW.2) and on the identification of Dhaniram Ahirwar (PW.2), the dead body of Dr.Neeraj Pathak was recovered and at place 'A', it is mentioned that the body of Dr.Neeraj Pathak was lying. Dhaniram Ahirwar (PW.2), admits his signatures on Exhibit P/2 from A to A part. He states that he was residing as a Choukidar outside the house of Dr.Neeraj Pathak by erecting a hutment and was looking after the house of Dr.Neeraj Pathak. No suggestion has been given to Dhaniram Ahirwar (PW.2) in cross-examination that the dead body, which was recovered vide Exhibit P/2 from the house of the appellant and the deceased was not that of Dr.Neeraj Pathak.

93. On the contrary, when the appellant examined herself as Defence Witness No.1 before the Trial Court, she admits that on 1.5.2021, she had



called Dr.K.K.Chaturvedi, when Dr.Neeraj Pathak was not responding but Dr.K.K.Chaturvedi had refused to visit them as corona virus was widely spread then upon his suggestion, she had asked her elder son Nitish Pathak to call the Police and the Police had come at 8:30 AM. In Paragraph No.3 of her examination-in-chief, she admits that the police personnel had gone upstairs for investigation and she was sitting on a Sofa on the ground floor. The police personnel had asked her to come upstairs but she said that she is not keeping good health, therefore, she had not gone to the first floor and thereafter, the police personnel had taken the dead body of Dr.Neeraj Pathak to the District Hospital at Chhatarpur for postmortem. She states that neither she herself nor her elder son had gone to the hospital for postmortem but once postmortem was conducted, the police had called her to the hospital where she had gone along with her son Nitish Pathak and she had taken custody of dead body of Dr.Neeraj Pathak.

94. Thus, it is evident that there is an admission of first fact that the appellant had gone upstairs on 1.5.2021 and had seen the body of Dr.Neeraj Pathak. Secondly, she had called Dr.K.K.Chaturvedi, who had refused to come to see Dr.Neeraj Pathak. Thirdly, on advice of Dr.K.K.Chaturvedi, she asked her son Nitish Pathak to call the police. Fourthly, the police had come



but she had not gone to the first floor alongwith the police personnel. Fifthly, Exhibit P/2 reveals that Dhaniram Ahirwar (PW.2), who was Choukidar had gone with the police to the first floor as Crime Form was filled in his presence and his signatures are available, therefore, she had knowledge that the dead body of Dr.Neeraj Pathak was taken for postmortem. Sixthly, after the postmortem, she and her son admittedly received the dead body. Hence, when all these facts are taken into consideration then the appellant's contention that the dead body of Dr.Neeraj Pathak was not identified properly, is not made out.

95. The contention that the mouth of dead body being closed as mentioned in the postmortem report (Exhibit P/1) is concerned, though it is vehemently submitted that it is impossible to have the mouth of a dead body closed in terms of the Textbook of Medical Jurisprudence and Toxicology but, Dr. Mukul Sahu (PW.1), who was one of the members of the postmortem team, which conducted the postmortem alongwith the panel of two doctors, namely, Dr.Arvind Singh and Dr. Surendra Sharma, was not subjected to cross-examination on this aspect as to why the mouth was shown as closed contrary to the submission made by the appellant that Pramod Rohit (PW.3) deposes in his examination-in-chief that the mouth was half open and in Exhibit P/6, it is



mentioned that the teeth are visible. However, that being an issue, which should have been categorically put forth to the concerned doctor of postmortem and having been not made loses its importance.

96. The appellant submits that a panel of three doctors was required to conduct postmortem but it was not conducted by a panel of three doctors as they were not examined in the Trial Court and, therefore, there is violation of the norms, is also not made out inasmuch as Dr. Mukul Sahu (PW.1) himself admits that he was member of panel of three doctors, who had conducted the postmortem and secondly, no such issue was raised as being sought to be raised by the appellant now before the concerned Dr.Mukul Sahu (PW.1). Infact, if the appellant is serious about this aspect of contradiction then she should have specifically asked Dr.Mukul Sahu (PW.1) with regard to such omissions. Infact, there is no contradiction to the effect that Dr. Mukul Sahu (PW.1) had not conducted the postmortem as a part of three members' team.

97. Yet another issue raised is with regard to duration of death as shown in the postmortem report. It is mentioned that as per the Textbook of Medical Jurisprudence and Toxicology by Modi, contradicts the postmortem report inasmuch as Dr.Mukul Sahu (PW.1) states that the rigor mortis passed off and thereafter on the aforesaid basis decided the duration of death to be 36 to 72



hours before the postmortem but in absence of concomitant decomposition changes, it is submitted that this finding cannot be substantiated.

98. Reliance is placed on the testimony of Dr.D.S.Badkur (DW.2), who states that he was working as Director, Medico Legal Institute at Bhopal. He states that generally in the summer or excessive temperature, the dead body starts decomposing between 12 to 18 hours. He states that between 18 to 36 hours, the dead body starts decomposing and its colour also starts changing. He states that if the duration of death is more than 36 hours then the body changes are such that it is difficult to correctly say about the injuries and the electric burn marks etc but he qualifies that unless the burn marks are deep.

99. Dr.D.S.Badkur (DW.2) was examined without mentioning his name in the list of defence witnesses and, therefore, his cross-examination was postponed for a day as is evident from the note sheet dated 18.5.2022. In cross-examination, he admits that if a dead body is kept in a cold place then the rigor mortis will not pass off hurriedly. He further admits that if the dead body is examined after passing off the rigor mortis then the injuries can be seen. He admits that the rigor mortis ends with the process of decomposition. He admits that all the parts of the body do not start decomposing simultaneously but the parts decompose at different points of time. The



decomposition starts firstly from the stomach. He admits that even after 36 hours, though it is difficult to identify electric current injury but it is not impossible.

100. When the aforesaid aspect is taken into consideration alongwith the testimony of Dr.Mukul Sahu (PW.1) then it is evident that Dr.Mukul Sahu (PW.1), who had conducted the postmortem, there is no suggestion to him with regard to the decomposition of the body, duration of postmortem and there is no challenge to his finding that the death had occurred between 36 to 72 hours since postmortem. Hence, the submission of Smt.Mamta Pathak relying on the Textbook of Jurisprudence by Modi, is of no assistance.

101. Since there are no suggestions to Dr.Mukul Sahu (PW.1) with regard to change of colour of the body, formation of foul smelling gases, availability of cooler in the room where Dr.Neeraj Pathak died that humidity will help in accelerating the rate of decomposition and this aspect too being not expounded by Dr.D.S.Badkur (DW.2) has no relevance on the finding of Dr.Mukul Sahu (PW.1) and his team that the death had occurred within 36 to 72 hours of the time of postmortem.

102. Infact, the aforesaid timing of 36 hours is corroborated from Merg Intimation (Exhibit P/8) where Smt.Mamta Pathak herself admits that she had



gone to Dr. Neeraj Pathak's room to ask for food on 29.4.2021 at about 9:00 PM but Dr. Neeraj Pathak did not respond and when she examined his pulse, it was not functional. When the aforesaid time of 9:00 PM is correlated with postmortem report (Exhibit P/1), which was conducted on 1.5.2021 at about 3:30 PM then that time corroborates the time of death of the deceased Dr. Neeraj Pathak and, therefore, the submission that lividity or red/red blue spot on the body of the deceased indicates that the death had occurred within 6 to 12 hours, is not made out. Again there is no cross-examination of Dr. Mukul Sahu (PW.1) on the aforesaid aspect.

103. Infact in **Lyon's Medical Jurisprudence for India by S.D.S.Greval, 10th Edition, 1953, Calcutta Thacker, Spink & Company**, it is mentioned that the colour mentioned on Page No.149, the putrefactive changes occurred in the following order :-

“Colour changes – *In about 24 hours, often earlier, a green patch appears on the abdominal wall in the right iliac region; this enlarges rapidly, within a few hours, the whole abdominal wall and the intercostal spaces are affected. The coloration now spreads to the face and considerably later to the limbs. At the same time, decomposition of the blood causes staining of the walls of the*



vessels and the more superficial of these now show through the skin as dark brown streaks, thus producing a marbled appearance on the surface. This marbling is not very evident on the dark complexioned until, at a later stage of decomposition, the epidermis was peeled off."

104. Thus, to substantiate what the appellant wants to submit, it is necessary for her to point out that the epidermis had peeled off and her husband was a fair complexion person. Both these aspects have not been said by the appellant or any of her witnesses nor any suggestion has been given to any of the doctors, who conducted the postmortem, therefore, the aforesaid submission that the postmortem report lacks credibility with regard to duration of the death etc, is not made out.

105. Interestingly, lot of emphasis is placed on the testimony of Dr.D.S. Badkur (DW.2) but Dr.D.S.Badkur (DW.2) did not exhibit any medico legal document or expert opinion of any author before the Trial Court. Therefore, in absence of any expert opinion to substantiate what Dr.D.S.Badkur (DW.2) had said and then his own admission that it is not impossible to notice marks of injuries caused due to electric current even after passing off rigor mortis, leaves no iota of doubt that the appellant is bro-beating around the bush



without putting any of the suggestions to the doctor, who conducted the postmortem.

106. Similarly, the appellant's submission that no electron microscopy was carried out from the deposition of metal particles into the skin/tissue too is not made out. Her another submission that the exit mark appears only when the body was earthed or grounded but her husband was lying on a wooden bed with mattress and bed sheet with his feet kept on a plastic chair as there was no earthing substance especially when the doctor of postmortem found an exit wound through scrotum of the deceased, which means that the circuit was complete and he was subjected to earthling.

107. Chhandilal Bajpai (PW.4) clearly states that on 29.4.2021, he had received a phone call from Dr. Neeraj Pathak of being tortured by Smt. Mamta Pathak and not giving him food besides locking him in the bathroom after pushing him inside causing injuries to his hip and the appellant was freed by the police personnel. The aforesaid fact could not be disputed by the appellant. Infact Dr. Neeraj Pathak had given a written complaint to the police personnel with regard to he being subjected to harassment.

108. Thus, when totality of facts are taken into consideration then the appellant's submission that the electron microscopy was not done for



deposition of metal particles, has no relevance in view of two facts, namely, (1) no suggestion was given to Dr.Mukul Sahu (PW.1) that in absence of scanning of skin through electron microscopy, it is not possible to say that the burns, which were found on the body of Dr.Neeraj Pathak, were caused due to electric current and (2) even Dr.D.S.Badkur (DW.2), Former Director of Medico Legal Institute did not say that without electron microscopy finding of electric burns cannot be given.

109. The next submission, which is made by the appellant, is that since the circuit was not complete, there could not have been an exit wound and she also submits that her house was so well insulated and because of the installation of RCCB, there could not have been any leakage of current and hence, no death could have occurred on account of the electric shock.

110. Munnilal Kushwaha (DW.4) states that he knows the work of light fitting. He was given certificate of '*Taar Mistri*' vide Exhibits D/50 & D/51 by the Electricity Department. He carries out the work of electric maintenance in the house of the appellant. He admits that he had not carried out the work of electric fitting in the house of the appellant but carries out the work of electric maintenance. He states that two RCCBs and 32 MCBs are fitted in the house and the whole house is well earthed. If current is given,



RCCBs will automatically fall. The house will not catch any fire nor there will be any short-circuit. In cross-examination, Munni Lal (DW.4) admits that he had not produced any certificate showing that he had carried out the electrical maintenance in the house of the appellant. He also admits that after the current flows through then only RCCB falls and thereafter it can again restart.

111. Similar statements have been given by Kamlesh Tiwari (DW.5). However, Kamlesh Tiwari (DW.5) admits in his cross-examination that in a house having earthing and having electrical safety equipments, if a wire is inserted through a plug and current is passed then after the current, RCCB will trip. He admits that he had not visited the house of Dr. Neeraj Pathak for last 4 to 5 years. There is no evidence that the MCBs & RCCBs were properly installed and functioned. Investigating Officer of the case Jagatpal Singh (PW.14) in Paragraph No.8 of his cross-examination denied the said installation.

112. When the aforesaid evidence is taken into consideration then in the light of the testimony of the Investigating Officer Jagatpal Singh (PW.14), who admits that he had seized two pin plug wire with another end naked vide Exhibit P/15, it is evident that firstly, earthing is possible only through a three pin plug wire where three internal cords of the electric wire are connected to



positive, negative and earthing. In two pin point plug, there is no aspect of earthing. Secondly, as admitted by Munnilal (DW.4) and Kamlesh Tiwari (DW.5), after passing of the current, the RCCB will fall. Munnilal (DW.4) clearly admits that after current is passed, RCCB will fall and then it can again be started.

113. Thus, the aforesaid part of the evidence clearly reveals that firstly, the theory of functioning of RCCB and the house being completely insulated, is not made out because in absence of earthing wire connected to the device seized vide Exhibit P/15, earthing will not function. Secondly, the RCCB can be manipulated and thirdly, there is medico legal evidence of exit wound of electric current through scrotum, which shows that earthing had taken place and the theory of dead body being found on the bed with legs on a plastic chair is not sufficient to hold that after earthing had taken place, the dead body could not have been placed in the position it was lying. Even otherwise, there is evidence of seizure of strip of Olanzapine Tablet, which is proved through viscera report Exhibit P/21 where the doctor opined that viscera material contains Olanzapine (Benzodiazepine).

114. All the issues with regard to closed mouth, non-conduct of chemical examination, absence of electron microscopy to find out deposition of metals



onto the skin/tissue, the house being wholly insulated and there being no possibility of completion of the circuit etc. are not made out to support the case of the appellant and, therefore, the aforesaid contentions made by the appellant deserve to and are hereby rejected.

115. The next issue is that according to the appellant as Dr. Neeraj Pathak was suffering from cardio vascular disease, therefore, his death occurred on account of such cardio vascular failure rather than anything else. Since he was suffering from cardio vascular disease from 2007, therefore, he died because of cardio vascular disease rather than electric shock.

116. Dr. D. S. Badkur (DW.2) states that he had seen the postmortem report of Dr. Neeraj Pathak. He admits that the death, which occurs due to suffocation leads blood to be fluid for long time and, therefore, the changes in body are slow and the clotting is not instantaneous. He admits in Paragraph No.5 that on current being given, heartbeat or breath can stop and that will depend on the quantum of voltage. His further admission that even after 36 hours, though it is difficult to identify the injury marks due to electric current but it is not impossible, leaves no iota of doubt that the cardio vascular disease was not the cause of death but the cardio vascular failure resulting from electric shock was the cause of death of Dr. Neeraj Pathak and, therefore, the fourth



issue is also answered in negative that Dr. Neeraj Pathak did not die of cardiovascular disease but because of cardiovascular failure or suffocation due to shock.

117. Now the last issue, which is required to be dealt with the aspect of this case being that of the circumstantial evidence and according to the appellant, the chain of circumstances is not complete, therefore, the guilt of appellant cannot be established.

118. As far as last submission put forth by the appellant is that it being a case of circumstantial evidence and there being no eye-witness account, therefore, in the light of the judgments of Apex Court in **Sujit Biswas versus State of Assam (supra)** and **Sharad Birdhichand Sarda versus State of Maharashtra (supra)**, since the chain of circumstances is not complete, therefore, her conviction cannot be upheld.

119. Shri Surendra Singh, learned Senior Counsel for the appellant tried to introduce an element of doubt by saying that since elder son of appellant Nitish Pathak was also available in the house, the finger of suspicion cannot be pointed out only towards the appellant and, therefore, his contention is that since the investigating authority has not investigated the role of Nitish Pathak,



(elder son of the appellant), therefore, benefit of doubt needs to accrue in favour of the appellant.

120. In **Sujit Biswas versus State of Assam (supra)**, the Apex Court has held that a distinction is to be drawn between proof beyond reasonable doubt and suspicion. Need for proof beyond reasonable doubt requires that a Court is duty bound to ensure that mere conjectures or suspicion do not take place of legal proof. Clear, cogent and unimpeachable evidence produced by prosecution, reiterated is a must, before accused is condemned as convict. In Paragraph No.14, the Apex Court has referred its judgment in **Kali Ram versus State of Himachal Pradesh (1973) 2 SCC 808** in the following terms:-

“25. Another golden thread, which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. It is also held that suspicion, however, grave cannot take



place a proof and there is a large difference between something that “may be” proof and something that “will be proved”.

121. The Apex Court in **Sharad Birdhichand Sarda versus State of Maharashtra (supra)** has held that the fact so established should be consistent only with the hypothesis with the guilt of the accused. They should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence with the accused and must show that in all human probability, the act must have been done by the accused.

122. When the aforesaid aspect is taken into consideration then the appellant’s contention that she has been falsely implicated by the relatives of her husband in the greed of her husband’s property, before we deal with the aspect of chain of circumstances, needs to be discarded in view of the admission of the appellant herself that she has two sons, who are Class-I heirs of the deceased Dr. Neeraj Pathak. Her younger son Manas Pathak is in USA and her elder son Nitish Pathak is with her and, therefore, when Class-I legal heirs are available then saying that out of the greed for property of Dr. Neeraj Pathak, she has been falsely implicated, is not made out.



123. Now the circumstances can be examined in the light of the testimony of the prosecution witnesses.

124. Dhaniram Ahirwar (PW.2) is the person, who was residing outside the house of the appellant and her husband by erecting a hutment as a Chowkidar. He categorically states that Smt.Mamta Pathak was residing in Peptech Colony. At the time of the incident, she was residing alongwith Dr.Neeraj Pathak in his house at Loknathpuram. Ten months' prior to the date of incident, Dr.Neeraj Pathak had brought her to his house. They were residing as husband and wife. He states that Nitish Pathak is elder son whereas Manas Pathak is a younger son of Dr.Neeraj Pathak and Smt.Mamta Pathak. Younger son Manas Pathak resides abroad and he keeps on visiting Dr.Neeraj Pathak.

125. Chhandilal Bajpai (PW.4) states that Smt.Mamta Pathak was torturing Dr.Neeraj Pathak and had closed him in the bathroom and had not given food to him for the last 2-3 days. Dr.Neeraj Pathak had sustained injuries on his head and thereafter she had broken opened the Almirah and taken cash, ATM, keys of the vehicle, FD. etc. Chhandilal Bajpai (PW.4) also admits that at his instance, his son Ashish had contacted his friend Arvind Pateriya, who had in turn contacted T.I. Civil Lines and the T.I. Civil Lines had helped Dr.Neeraj Pathak to come out of the illegal confinement. Thereafter, at 12:54 Noon, he



had enquired from Dr.Neeraj Pathak and Dr.Neeraj Pathak stated that he had come out of the bathroom. In the evening, he tried to contact him at about 7:05 PM, but he had no talk with Dr.Neeraj Pathak. His call details were seized through a pen drive and Panchnama was prepared vide Exhibit P/9. The pen drive was marked as Article A2. A lot has been said about the validity of the certificate given under Section 65B Indian Evidence Act but fact of the matter is that the aforesaid pen drive was played on the Court computer and in the presence of the prosecution as well as defence witnesses and no doubt was created as to the authenticity of the pen drive or its contents.

126. Chhandilal Bajpai (PW.4) admits that the police personnel after freeing Dr.Neeraj Pathak from his illegal confinement, had put a photograph on the mobile of Arvind Pateriya, who had transmitted it to Ashish and that was placed in the pen drive Exhibit A/2. The suggestion given to him that the police had not helped in recovering Dr.Neeraj Pathak is denied by Chhandilal Bajpai (PW.4). Chhandilal Bajpai (PW.4) admits that he could not visit Dr.Neeraj Pathak because of ‘Corona Lockdown’ but he had given intimation to the police. Chhandilal Bajpai (PW.4) clearly states that how Dr.Neeraj Pathak was tortured by Smt.Mamta Pathak and there is no denial to this aspect.



127. Infact Ratan Singh Yadav (PW.12) corroborates the motive. He clearly states that a bag was delivered by Smt.Mamta Pathak to her mother at Harpalpur on way to Jhanshi. Section 8 of the Indian Evidence Act, 1872 deals with the motive, preparation and previous or subsequent conduct. Section 8 provides that “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”.

128. In the present case, certain facts are required to be reiterated, namely, the conduct of Smt.Mamta Pathak as pointed out by Chhandilal Bajpai (PW.4) that he had received a phone call on 29.4.2021 that Dr.Neeraj Pathak was locked inside his bathroom by Smt.Mamta Pathak. His attempt to contact Civil Lines Police Station and then communication of message that Dr.Neeraj Pathak was freed from said the illegal confinement supported with a photograph sent through the messenger of his mobile phone. The second



aspect is that four Tablets of Oleanz-10 were found to be absent from the concerned wrapper. There is evidence Ratan Singh Yadav (PW.12) that Smt.Mamta Pathak had taken a detour to Harpalpur to deliver a bag to her mother.

129. In Merg Intimation (Exhibit P/8), Smt.Mamta Pathak admits that on 29.4.2021, she has visited the room of Dr.Neeraj Pathak to ask him for food but when he did not respond, she had checked his pulse, which was found to be absent but she did not report this matter to anybody and instead chose to take her son Nitish Pathak to Jhanshi without there being any work, which is again substantiated from the evidence of Ratan Singh Yadav (PW.12). Her motive is also proved through the fact that it is though not authentically stated but it is available on record that she was residing separately at Peptech Colony and had joined Dr.Neeraj Pathak few months back. Thus, as per Section 106 of the Indian Evidence Act, 1872, the burden of proving that when on 29.4.2021 itself, she had discovered that Dr.Neeraj Pathak was no more then what was the motive in not disclosing the aforesaid fact to anybody till 1.5.2021. The appellant's contention that she had visited Dr.Neeraj Pathak on 30.4.2021 after returning from Jhanshi is not made out from record in terms of the Postmortem Report (Exhibit P/1) inasmuch as had Dr.Neeraj Pathak



would have died on 1.5.2021 or in the night of 30.4.2021 then in the postmortem, which was conducted on 1.5.2021 at 3:30 PM, it would not have been mentioned that the duration of death was between 36 to 72 hours. Thus, on both counts of Section 8 and Section 106 of the Indian Evidence Act, 1872, it cannot be said that Smt.Mamta Pathak was not having any motive to eradicate Dr.Neeraj Pathak as that would have allowed her full access to his property and assets.

130. **In State of U.P. versus Baburam AIR 2000 (SC) 1735**, it is held by the Apex Court that motive is that which moves a person to do a particular act. There can be no action without a motive, which must exist for every voluntary act. Generally speaking the voluntary acts of same persons have an impelling emotion or motive. Motive in the correct sense is the emotions suppose to have let to the act. It is often proved by the conduct of a person the ordinary feelings, passions and propensities under which parties act, are facts known by observation and experience; and they are so uniform in their operation that a conclusion may be safely drawn that if a party acts in a particular manner, he does so under the influence of a particular motive. The false explanation by accused persons is also relevant to deal with the aspect of motive.



131. In **Varun Chaudhary versus State of Rajasthan AIR 2011 SC 72**, it is held by the Apex Court that the motive for commission of an offence is of particular importance only in cases of purely circumstantial evidence for, in such cases, the motive itself would be a circumstance which the Court would have to consider.

132. When the aforesaid aspect is taken into consideration then there being a motive substantiated with past and conduct of the appellant and further proved through attempt to falsify the evidence, leads no iota of doubt that the appellant was possessed of strong motive to eliminate Dr. Neeraj Pathak as she was suspecting infidelity and had subjected Dr. Neeraj Pathak to cruelty on 29.4.2021 itself as proved by Chhandilal Bajpai (PW.4).

133. Appellant's contention that she was a best mother for her children as sought to be demonstrated through a Greeting Card sent by her children on her birthday is not a sufficient circumstance to take away the motive because a person may be a 'doting mother' but may also be a 'suspecting wife' at the same time and unless any evidence is brought on record to show that there was not only an element of cordiality but relationship between husband and wife was of great faith and understanding and merely on suggestion of the appellant, the motive cannot be removed from the acts of the appellant.



134. The photograph showing that the appellant is feeding Dr. Neeraj Pathak or showing her in the company of Dr. Neeraj Pathak and in the company of her children clearly reveals that none of them are of the recent past. Secondly, immediate past and conduct are required to be examined rather than remote incidence to deduce the motive. When tested in the light of recent events then the motive is writ large from the evidence of Dhaniram Ahirwar (PW.2), who has though admitted that 10 months prior, they were living separately but why they were living separately is not explained. Ratan Singh Yadav (PW.12), who had taken her to Jhanshi and also in view of the testimony of Maya Gupta (PW.5), who categorically states in Paragraph No.2 of her cross-examination that when she was preparing meals for Dr. Neeraj Pathak, at that time Smt. Mamta Pathak was not residing with him, reflects lack of cordiality between Smt. Mamta Pathak and Dr. Neeraj Pathak, which further corroborates by the testimony of Chhandilal Bajpai (PW.4).

135. The another aspect emphasized beyond a point by Shri Surendra Singh, learned Senior counsel for the appellant that the role of Nitish Pathak cannot be excluded and, therefore, the benefit of doubt should be given to the appellant is concerned, firstly Smt. Mamta Pathak categorically denied in the open Court that the statement of Shri Surendra Singh to be true that even her



son could have been a sinner. Secondly, there is no element of motive attached to Nitish Pathak. Thirdly, Smt.Mamta Pathak has admitted in the Merg Intimation that she had visited Dr.Neeraj Pathak on 29.4.2021 and his pulse was absent. Thereafter, her conduct in saying that on return from Jhashi, she had met Dr.Neeraj Pathak on 30.4.2021 and he was alive but on 1.5.2021, she had found him to be dead, clearly indicates towards the role of Smt.Mamta Pathak and not that of Nitish Pathak. There is no iota of suggestion that Nitish Pathak visited Dr.Neeraj Pathak on the first floor either on 29th April, 2021 or on return from Jhanshi on 30.04.2021 until he was called by his mother Smt.Mamta Pathak in the morning on 1.5.2021. When the aforesaid aspects are taken into consideration then in the light of the judgment of **Varun Chaudhary versus State of Rajasthan (supra)** wherein it is held that evidence of motive becomes one of the circumstances where there is no direct evidence.

136. In view of motive available in the facts and circumstances of the case and also in view of the conduct of the appellant, the judgments rendered by the Apex Court in **Varun Chaudhary versus State of Rajasthan (supra)**, **Hanumant versus State of Madhya Pradesh (supra)**, **Kali Ram versus**



State of Himachal Pradesh (supra) and **Sharad Birdhichand Sarda versus State of Maharashtra (supra)** will be of no assistance to the appellant.

137. Similarly, the appellant's reliance on the decision of the Apex Court in **Sujit Biswas versus State of Assam (supra)** saying that there is distinction between proof beyond reasonable doubt and suspicion is concerned, in the light of the motive and the judgment of the Apex Court in **Varun Choudhary versus State of Rajasthan (supra)**, which in compasses the aspect of conduct of the appellant, the motive being an important ingredient of circumstantial evidence is in itself sufficient to complete the chain of circumstances.

138. In **Nagendra Sah versus State of Bihar (supra)**, the judgment of conviction was reversed as was upheld by the High Court also by the Apex Court on the ground that there was nothing to show that relationship between the appellant and the deceased was restrained in any manner. But in the present case, testimony of Ratan Singh Yadav (PW.12) itself besides that of Dhaniram Ahirwar (PW.2) and Maya Gupta (PW.5) is available on record to show that the relationship was restrained and there was an element of mistrust their relationship. The judgment of the Apex Court in **Shingara Singh versus State of Haryana & Another (supra)** is of no relevance to the appellant inasmuch as the aforesaid verdict deals with omissions in site plan and in



Paragraph Nos.27 to 29, it is held by the Apex Court that the site plan can be fettle only when it can be shown that it will prejudice the case of the defence. But in the present case, not showing the switch board from which the current was allegedly flown in the body of Dr.Neeraj Neeraj Pathak using a seized electric wire with a two-pin socket appears to be no fettle to the case of prosecution and, therefore, the judgment of the Apex Court in **Shingara Singh versus State of Haryana & Another (supra)** has any relevance to the facts and circumstances of the case.

139. The fact that the recovery of dead body from the house of Dr.Neeraj Pathak where she was living with the deceased but she did not explain about the incident; recovery of articles; the testimony of last seen by Dhaniram Ahirwar (PW.2) and Chhandilal Bajpai (PW.4) in the present case; coupled with the fact that they were having strained relationship and taking a false plea of alibi by the appellant, cannot be glossed over on account of minor discrepancies in view of the decision of the Apex Court in **Sushil Kumar versus State of Punjab (supra)**, which clearly makes a mention that minor discrepancies are bound to appear in natural course of conduct of a normal human being and disposed of the appeal by modifying the judgment of death



sentence to that of life imprisonment and similar circumstances appear in the present case.

140. So far as the aspect of the appellant being not in custody while recording her memorandum is concerned in the light of the judgment of the Calcutta High Court in **Collector of Customs versus Calcutta Motor and Cycle Company & Others (supra)** is concerned, which draws a distinction saying that Article 20(3) of the Constitution of India will be available only to a person, who has been formally accused or charged. The Calcutta High Court has held that Article 20(3) of the Constitution of India is a protection against self-incrimination and not protection against anything else. So long as they are not compelled to answer a question by answering, which they may incriminate themselves, or compelled to produce an incriminating document, they cannot complain that they have been asked to appear before the Customs Authorities or to produce documents. When ratio of the judgment in **Collector of Customs versus Calcutta Motor and Cycle Company & Others (supra)** is taken into consideration then it is evident that while giving memorandum, there was no compulsion available against the appellant to record her memorandum and, therefore, the provisions of Article 20(3) of Constitution of India shall not be applicable.



141. In **Ramswaroop versus State AIR 1958 All. 119, Jems J**, it is held that since Article 20(3) of the Constitution of India gives only a privilege to an accused, he can always waive it.

142. The judgment of the Apex Court in **Amar Singh versus Balwinder Singh & Others (supra)** will not have any application to the facts and circumstances of the present case because the FIR was promptly transmitted to the Magistrate as noted above.

143. In **State of Madhya Pradesh versus Sanjay Rai AIR 2004 SC 2174**, it is held by the Apex Court that the opinions of Authors in Textbooks may have persuasive value but cannot always be considered to be attentively binding. Such opinions cannot be elevated to or placed on higher pedestal than the opinion of expert examined in Court. In the present case, Dr.D.S.Badkur (DW.2) did not produce any medical text and the appellant did not confront Dr.Mukul Sahu (PW.1) with any medical text and, therefore, the reliance placed by the appellant on various textbooks of Medical Jurisprudence like **Essentials of Forensic Medical and Toxicology, 35th Edition by K.S.Narayan Reddy and O.P.Murty and Forensic Medicine and Toxicology by Krishna Vij** will not help the appellant in absence of the postmortem doctor Dr.Mukul Sahu (PW.1) or the Investigating Officer of the



case Jagatpal Singh (PW.14) being confronted with the text in the light of the judgment of the Apex Court in **State of Madhya Pradesh versus Sanjay Rai (supra)**.

144. Reliance placed by the appellant on the judgment of the Apex Court in **Arvind Singh versus State of Maharashtra AIR 2020 SC 2451** is not of much consequence inasmuch as in that case, the prosecution had failed to prove the aspect of motive whereas in the present case, the prosecution has been able to demonstrate the aspect of motive.

145. The law laid down by the Apex Court in **Laxman Prasad Alias Laxman versus State of Madhya Pradesh (supra)** deals with the aspect of one link in chain of circumstances to be missing and not proved and hence, it is held that the conviction cannot be sustained in the eyes of law. Similarly, in **Chotkau versus State of Uttar Pradesh (supra)**, it is held by the Apex Court that there is necessity of nearly establishing that the deceased was last seen in the company of the accused. In the present case, there is an admission of the appellant that she was lastly in the company of the deceased and then burden could not be discharged to prove that there was any intrusion or any other member of the family walking up to first floor where Dr. Neeraj Pathak was allegedly in isolation on account of suspected corona patient and, therefore,



the facts of **Chotkau versus State of Uttar Pradesh (supra)** being different will not be applicable to the present case.

146. In **Shivaji Chintappa Patil versus State of Maharashtra (supra)**, it is held by the Apex Court that false explanation or non-explanation of the difference can be used as additional circumstance when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of accused and similar facts are available in the present case.

147. Reliance placed by the appellant on the judgment of the Apex Court in **Gargi versus State of Haryana (supra)** has no application to the facts of the present case because in that case, the Apex Court has held that the foundational motive for the alleged murder that of strained relations between them and reasons for those strained relations not established by cogent evidence, therefore, the circumstances do not form a complete chain but in the present case, both the motive and aspect of strained relationship is proved. The appellant has though tried to shift the burden but has not discharged her own burden under Section 106 of the Indian Evidence Act, 1872 that she was not residing in Peptech Colony separately from the appellant as is alleged by Dhaniram Ahirwar (PW.2). The onus was on the appellant to have proved that for what reason, she was residing separately in Peptech colony and for what



reasons, she decided to cohabit with Dr. Neeraj Pathak about 10 months prior to the date of the incident.

148. Reliance placed by the appellant on the judgment of the Apex Court in **Kalyani Baskar (Mrs.) versus M.S. Sampornam (Mrs.) (2007) 2 SCC 258** is to the effect that fair and proper opportunities should be allowed to the defence also to prove innocence of accused. Adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial. However, when the aforesaid aspect is examined then the appellant was granted an ample opportunity to lead defence evidence and that evidence has been considered both by the Trial Court as well as by this Court and, therefore, the judgment of the Apex Court in **Kalyani Baskar (Mrs.) versus M.S. Sampornam (Mrs.) (supra)** will have little or no application to the facts of the present case.

149. Similarly, reliance is placed by the appellant on the judgment of the Apex Court in **Ashish Batham versus State of Madhya Pradesh (2002) 7 SCC 317** wherein it is held that the accused is presumed to be innocent till charges against him are proved beyond reasonable doubt. Mere heinous or gruesome nature of the crime is not enough to punish the accused. Mere suspicion, however, strong it may be, cannot take the place of legal proof.



The alibi taken by the accused that on the date of the incident, he was not present at the place of the occurrence and had instead gone to another city alongwith his sister, in absence of any clinching evidence to the contrary, held, the Courts below were not justified in merely disbelieving the evidence adduced by the accused in support of his plea.

150. However, when the aforesaid aspect is taken into consideration then it is evident that in the present case, the appellant herself being author of Merg Intimation (Exhibit P/8), admitted that Dr. Neeraj Pathak was found to be no more on 29.4.2021. Thereafter, she had travelled to Jhansi on 30.4.2021 and as per her own version, she had met Dr. Neeraj Pathak on return from Jhansi at night. She found him to be dead on 1.5.2021. The aspect of alibi is to show that Dr. Neeraj Pathak died behind her back and she was away to Jhansi, is not available to her and, therefore, on this touchstone, the judgment of the Apex Court in **Ashish Batham versus State of Madhya Pradesh (supra)** will have no application to the facts of the present case.

151. As far as law laid down by the Apex Court in **R.K.Dalmia & Others versus The Delhi Administration (supra)** is concerned, it is in support of the contention that under Section 342 of the Code of Criminal Procedure, 1973, no question can be put regarding a matter when there is no evidence about it.



However, this has no application to the facts and circumstances of the case inasmuch as all the material, which was found during the investigation, has been placed before the accused while examining her under Section 313 of the Cr.P.C and, therefore, that cannot be said to be the case applicable to the facts of the present case. Reliance placed by the appellant on the judgment of the Apex Court in **Rajkumar Singh versus State of Rajasthan (2013) 15 SCC** has no application to the facts of the present case.

152. Reliance placed by the appellant on the judgment of the Apex Court in **State of Madhya Pradesh versus Nishar AIR 2007 SC 2316** is not applicable to the facts and circumstances of the present case inasmuch as the ratio in that case is that extra judicial confession made much before the FIR was lodged, should find a mention in the FIR. In the present case, extra judicial confession given to the so-called driver Ram Ratan Yadav (PW.12) is not a reliable piece of evidence but the conduct of the appellant throughout has been taken into consideration and that has been viewed to complete the chain of circumstances as per the decision of the Apex Court in **Varun Choudhary versus State of Rajasthan (supra)**, therefore, even the aforesaid judgment will not have any application to the facts and circumstances of the present case.



153. In **Nankaunoo versus State of Uttar Pradesh (2016) 3 SCC 317**, the ratio of law is that there is difference between ‘Intention’ and ‘knowledge’. Framers of the IPC designedly used the words “intention” and “knowledge” and it is accepted that the knowledge of the consequences, which may result in doing an act, is not the same thing as the intention that such consequences should ensue. Thus, placing reliance on the judgment of the Apex Court in **Nankaunoo versus State of Uttar Pradesh (supra)**, it is though submitted by the appellant that there was no intention, therefore, the case is liable to be converted into one under Section 304 of the IPC but fact of the matter is that the manner in which things were planned and executed, blurs the difference ‘intention’ and ‘knowledge’. It appears to be a well planned cold blooded murder where benefit of aforesaid judgment cannot be extended in favour of the appellant.

154. Reliance placed by the appellant on the judgment of the Apex Court in **Ramesh Chandra Agrawal versus Regency Hospital Limited & Others (supra)** is to the effect that the evidence of an expert is of an advisory character and credibility of such witness depends on reasons stated in support of his conclusions and data and material furnished which form basis of his conclusions.



155. When the ratio of the Apex Court in **Ramesh Chandra Agrawal versus Regency Hospital Limited & Others (supra)** is applied to the facts and circumstances of the present case then it cuts both ways. If the postmortem doctor had given opinion that it is a case of electric shock resulting in electric burn then in absence of any question being put to him with regard to electron microscopy etc and also challenging his ability to decipher such electric burn on account of passage of time though Dr.D.S.Badkur (DW.2) admitted that though it is difficult with passage of time to discern such occurrences but it is not impossible then the appellant too has not discharged its burden that RCCBs were functional and connected. The installation is one aspect and the functionality is another aspect. Since Munnilal Kushwaha (DW.4) and Kamlesh Tiwari (DW.5) could not explain the functionality of RCCBs etc, therefore, the judgment of the Apex Court in **Ramesh Chandra Agrawal versus Regency Hospital Limited & Others (supra)** will not help and aid the appellant in the present case.

156. The appellant places reliance on the judgment of the Apex Court in **Prem Singh versus State (NCT of Delhi) (supra)** to submit that the defence of insanity or mental incapacity is available for which principles have been reiterated but in the present case, the appellant herself admitted that with



medication, her son was 95% functional. She has enclosed photographs of her son Nitish Pathak performing rituals relating to death of her husband. Thus, the clever attempt on the part of learned Senior Advocate to shift the burden and create a space for benefit of doubt for the appellant is not made out especially when no medical condition of Nitish Pathak has been brought to notice of this Court to show that he had a bout of insanity resulting in such a planned crime. Secondly, no material is brought on record to show that there was any element of discord or could there be any motive to eliminate his father especially when evidence is on record that he had cordial relations with his father and even during the time when he was residing separately with his mother at Peptech Colony, he used to visit his father.

157. Thus, both on the aspect of motive and medical condition, the suggestion given to create a doubt is not made out and, therefore, the judgment of the Apex Court in **Prem Singh versus State (NCT of Delhi)** (**supra**) will have no application to the facts and circumstances of the present case.

158. **Mulak Raj & Others versus State of Haryana** (**supra**) is a case of circumstantial evidence wherein it is held by the Apex Court that merely because the deceased died a homicidal death and her body was found in the



kitchen with postmortem burns, it cannot be inferred that the said the circumstance by itself would connect all the accused or anyone of them with the crime. In view of unsatisfactory state of evidence led by the prosecution, the question as to who killed the deceased remained unanswered but as discussed hereinabove, the judgment of the Apex Court in **Mulak Raj & Others versus State of Haryana (supra)** too will not have any application to the facts and circumstances of the case.

159. Another circumstance is with regard to the C.C.T.V footage recovered from the house of the appellant. The CD was prepared by Amit Shivhare (PW.6) as contained in Article A3 and he had given certificate under Section 65B of the Indian Evidence Act as contained in Exhibit P/10. Smt.Mamta Pathak herself admits that in the CDR, nobody is seen though the video cameras are capable of capturing photographs from all surroundings of the house.

160. This is second circumstance that there was no movement of any outsider to the house of Dr.Neeraj Pathak though it is submitted by Smt.Mamta Pathak that there was a common gallery leading to his practice chamber, there was a shop of pharmacist, there was a laboratory in the clinic etc and the police did not investigate movement of anybody from those two staircases connecting



the first floor to an open gallery but it is an admitted fact that when no movement was seen in the CDR then it is evident that Dr.Neeraj Pathak was not subjected to cruelty by any outsider.

161. Firstly, it is an admitted fact that the house in which the incident took place is of Dr.Neeraj Pathak. Admittedly, the aforesaid house was jointly shared by Smt.Mamta Pathak and her son Nitish Pathak at the time of the incident. Thus, when there was no external movement to the house and admittedly, the appellant had seen her husband on 29.4.2021 at about 9:00 PM as admitted by her in the Merg Intimation and had found that his pulse was not functional, her conduct of not reporting the matter to the police and travelling to Jhansi on the pretext of undergoing dialysis and not contacting any doctor at Jhansi as is admitted by Driver Ratan Singh Yadav (PW.12), who had taken her to Jhansi, and thereafter giving a memorandum by Smt.Mamta Patak vide Exhibit P/14 and thereafter recovery of electric wire at her instance by Jagatpal Singh (PW.14) so also recovery of the strip of Olanzapine Tables out of which four tables were found to be empty, the presence of Olanzapine in the viscera material (Exhibit P/21) of Dr.Neeraj Pathak and coupled with the testimony of Dr.Mukul Sahu (PW.1) that



Dr.Neeraj Pathak was electrocuted, leaves no iota of doubt that firstly, there was no trespassing to the house of Dr.Neeraj Pathak.

162. Secondly, the minor discrepancies in the investigation are not sufficient to defeat the present case.

163. Thirdly, the clever move made by learned Senior Advocate Shri Surendra Singh to introduce an element of doubt that elder son Nitish Pathak, was also sharing the same house and even a finger can be raised towards Nitish Pathak, therefore, the benefit of doubt should accrue in favour of Smt.Mamta Pathak, gets nullified from very statement of Smt.Mamta Pathak that on 29.4.2021, she had gone to the room of Dr.Neeraj Pathak and when he did not respond, she had checked his pulse, his pulse was non-functional and her submission that she had gone to Jhansi on the next day but not revealing the fact that her son had gone to the first floor where Dr.Neeraj Pathak was kept in isolation on the basis of suspected Covid patient, the report of Dr.Mukul Sahu (PW.1) showing that Covid antigen report of Dr.Neeraj Pathak was negative, leaves no iota of doubt that Dr. Neeraj Pathak was apparently not suffering from Covid while infact Dr.Neeraj Pathak was under a forceful isolation, he was visited by Smt.Mamta Pathak and not her son Nitish Pathak on 29.4.2021, the elder son Nitish Pathak for the first time visited his father



Dr.Neeraj Pathak on the first floor on 1.5.2021 alongwith the police personnel as Smt.Mamta Pathak had shown her inability to visit first floor of the house as she was not keeping good health and decided to be seated on a Sofa lying on the ground floor, her conduct of going to Jhansi without there being any reason, handing over a bag to her mother as stated by the Driver Ratan Singh Yadav (PW.12), who had taken her to Jhansi and thereafter roaming around Jhansi and then coming back to Chhatarpur at 9:30 PM where Driver Ratan Singh Yadav (PW.12) admitted that he had left Smt.Mamta Pathak and Nitish Pathak showing that Nitish Pathak was not left alone in the house when Smt.Mamta Pathak was away, completes the chain of circumstances to arrive at a conclusion that it was Smt.Mamta Pathak alone, who for the reasons best known to her, was not keeping good terms with her husband as proved by Chhandilal Bajpai (PW.4), tortured him to death firstly by serving seductive drug and thereafter passing electric current and since all the circumstances in the chain are complete, the guilt of Smt.Mamta Pathak is proved beyond all reasonable doubt.

164. Accordingly, the impugned judgment dated 29.6.2022 passed by learned III Additional Sessions Judge, Chhatarpur in Sessions Trial No.84/2021 convicting the appellant Smt.Mamta Pathak, W/o.Late Dr.Neeraj Pathak for



the offence under Section 302 of the Indian Penal Code, 1860 cannot be faulted with.

165. Resultantly, this appeal fails and is dismissed.

166. The temporary suspension granted by a Coordinate Bench of this Court vide order dated 13.3.2024 shall stand cancelled. The appellant Smt.Mamta Pathak shall immediately surrender before the Trial Court for undergoing the remaining part of the jail sentence.

167. Record of the Trial Court be sent back.

168. Let a copy of this judgment be sent to the Trial Court for necessary information.

(Vivek Agarwal)
Judge

(Devnarayan Mishra)
Judge