



Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1502 of 2021

Smt. Seema Gupta

.....Appellant

Versus

State of U.P.

.....Respondent

Counsel for Appellant	:	Ms. Shweta Singh Rana, Advocate
Counsel for Respondent(s)	:	G.A.

Along with :

1. Jail Appeal No. 63 of 2021:

Mukesh Gupta

..... Appellant

Versus

State of U.P.

... Respondent

Court No. - 44

HON'BLE J.J. MUNIR, J
HON'BLE VINAI KUMAR DWIVEDI, J.
(Delivered by Hon'ble J.J. Munir, J.)

1. This appeal is directed against a judgment and order of Mr. Mohd. Quamar, the then Additional Sessions Judge/ Fast Track Court No.2, Shahjahanpur dated 18.02.2020 passed in Sessions Trial No.519 of 2014, convicting the appellants for an offence punishable under Section 302/ 34 of the Indian Penal Code (for short, 'IPC') and sentencing each of them to suffer imprisonment for life, besides a fine in the sum of Rs.10,000/- each; and, in default, ordering six months' simple imprisonment.

2. A First Information Report ('FIR' in short) was lodged by Brajesh Kumar with Police Station Kalan, District Shahjahanpur on 20.08.2014, saying that the informant was a resident of Village Mahodavan, Police Station Bilhaur, District Kanpur Nagar. His

younger brother of full blood, Pradeep Kumar aged about 28 years, who was unmarried, was teaching for the three years past as a private tutor at Barah Kalan, P.S. Kalan. He was employed privately as a teacher with the Srinagar Inter College there. The employment would fetch him Rs.2500/- (presumably per month) and some money he would earn from the coaching he offered to students. Pradeep Kumar lived at Barah Kalan village in a room, he had rented from Mukesh Gupta, part of the latter's house. The informant's mother Smt. Siyarani would also frequent his brother's place. On 19.08.2014 at 11.38 p.m., the informant received a phone call on his mobile number 9621820180 from a mobile phone, bearing number 8853630754. The informant said that Mukesh Gupta had called him from Barah Kalan, who was his brother's landlord, telling him that the informant's brother had done something awful to his daughter. Mukesh Gupta, according to the informant, said that Pradeep had impregnated his daughter outside wedlock and he did not know what to do about it. The caller made Pradeep talk to the informant. The informant's brother told him that his landlord Mukesh Gupta and his wife Seema, accusing him of illicit relations with their daughter 'X', had locked him up in a room and intend to do him to death. He wanted to talk to their mother. The informant made their mother Siyarani talk to his brother, who was very panicky. The informant further on says that he and his mother pleaded with Mukesh and wife not to harm Pradeep and that he along with his mother would reach their place by the following morning. According to the informant, the way Mukesh Gupta spoke to him over mobile, made him sense some evil in the offing. Therefore, the informant, besides his mother, also took along Rakesh Katiyar, Narendra Katiyar, Ashok, Vinod, Ishwar Dayal and Pradeep, hiring a vehicle and left for Barah Kalan. The informant received a phone call from one Master Yadav, a colleague of his brother, calling from the latter's mobile number 7525079412, who informed him that his brother

Pradeep Katiyar and 'X' have both been done to death by Mukesh Gupta and his wife Seema, throttling the two by tightening something around their neck. The informant and his family were deeply saddened and reached Barah Kalan only to find the dead bodies of his brother Pradeep and Mukesh's daughter 'X', lying in an anteroom of Mukesh Gupta's shop. The informant said that Mukesh and his wife had done the two to death on account of the illicit relations. The informant also reported that Mukesh owed his brother a sum of about Rs.1 lac. This too, according to the informant, was the reason for Mukesh to murder his brother and his own daughter.

3. On the basis of the said information, an FIR was lodged on 20.08.2014 at 12.30 p.m., giving rise to Case Crime No.429 of 2014, under Section 302 IPC, Police Station Kalan, District Shahjahanpur. The Police commenced investigation. They held inquests regarding Pradeep Kumar's unnatural death as well as that of 'X' on 20.08.2014. The inquest on Pradeep's cadaver commenced at 1.15 p.m. ending 2.25 p.m., whereas 'X's inquest commenced at 2.30 p.m. ending at 3.30 p.m. The dead bodies were then sent for autopsy. Pradeep Kumar's autopsy report dated 21.08.2014 opined the cause of death as asphyxia as a result of *ante-mortem* strangulation. 'X's autopsy report, also dated 21.08.2014, shows the cause of death as asphyxia as a result of *ante-mortem* strangulation.

4. There is on record a report from Verma Clinic and Maternity Home, Railway Station Road, Civil Lines, Budaun dated 19.08.2014, marked Ex. Ka-2, relating to 'X', which shows her to be in the family way.

5. The Police, after investigation, filed a charge-sheet on 17.09.2014 against Mukesh Gupta and Smt. Seema Gupta, his wife, charging them of an offence punishable under Section 302 IPC.

6. The learned Magistrate took cognizance of the offence and summoned the appellants. They appeared before the Court, whereupon the learned Magistrate furnished them copies of the relevant prosecution papers as provided under Section 207 Cr.P.C. Thereafter, the learned Magistrate committed the case to the Sessions, where it came up before the learned Sessions Judge for framing of charges.

7. The learned Sessions Judge *vide* order 19.11.2014 jointly charged Mukesh Gupta and Seema Gupta of sharing a common intention, and in furtherance thereof, murdering the informant's brother Pradeep Kumar and their daughter 'X' by throttling the two to death. They were charged with the commission of an offence punishable under Section 302/34 IPC. The appellants pleaded not guilty and claimed to be tried.

8. The prosecution produced the following witnesses in support of their case:

1. PW-1 – Brajesh Kumar, the first informant and brother of the deceased Pradeep Kumar,
2. PW-2 – Siyarani, mother of the deceased Pradeep Kumar,
3. PW-3 – Narendra Kumar, one of the men, who accompanied the informant from Bilhaur, Kanpur Nagar,
4. PW-4 – Rakesh, another man, who had accompanied the informant from Bilhaur, Kanpur Nagar,
5. PW-5 – Dr. Smt. Manju Verma, the doctor from Badaun, who had examined 'X', done an ultrasound of the abdomen and opined her pregnant,
6. PW-6 – Dr. Manoj Kumar Srivastava, who had done autopsy on the cadavers of Pradeep and 'X',
7. PW-7 – SI Prem Chandra Sharma, then a Head *Moharrir* posted at P.S. Kalan, District Shahjahanpur, who had registered the *check* FIR and made the necessary G.D. Entries,

8. PW-8 – Retired SI Ranveer Singh, then a Sub-Inspector posted at P.S. Kalan, District Shahjahanpur, who held inquests of the dead bodies, and,

9. PW-9 – Sher Singh Tomar, the then Station House Officer, P.S. Kalan, District Shahjahanpur and the Investigating Officer of the crime.

9. The following documentary evidence and materials were produced by the prosecution to establish their case:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	Written report dated 20.08.2014 lodged with the Police Station Kalan, District Shahjahanpur, proved by PW-1, Brajesh Kumar
2	Ex. Ka-2	Ultrasound (Obstetric) report dated 19.08.2014, proved by PW-5, Dr. Smt. Manju Verma
3	Ex. Ka-3	Postmortem Report of the deceased Pradeep Kumar, dated 21.08.2014, proved by PW-6, Dr. Manoj Kumar Srivastava
4	Ex. Ka-4	Postmortem Report of the deceased 'X', dated 21.08.2014, proved by PW-6, Dr. Manoj Kumar Srivastava
5	Ex. Ka-5	Check FIR dated 20.08.2014, proved by PW-7, SI Prem Chandra Sharma
6	Ex. Ka-6	Carbon Copy of GD Entry No.29, proved by PW-7, SI Prem Chandra Sharma
7	Ex. Ka-7	Inquest report of Pradeep Kumar dated 20.08.2014, proved by PW-8, Retd. SI Ranveer Singh
8	Ex. Ka-8	Letter to CMO regarding Pradeep Kumar dated 20.08.2014, proved by PW-8, Retd. SI Ranveer Singh
9	Ex. Ka-9	<i>Challan Lash</i> (Police Form No.13) of Pradeep Kumar, proved by PW-8, Retd. SI Ranveer Singh
10	Ex. Ka-10	<i>Photo Lash</i> of Pradeep Kumar, proved by PW-8, Retd. SI Ranveer Singh
11	Ex. Ka-11	Inquest report of 'X' dated 20.08.2014, proved by PW-8, Retd. SI Ranveer Singh
12	Ex. Ka-12	Letter to CMO regarding 'X' dated 20.08.2014, proved by PW-8, Retd. SI Ranveer Singh
13	Ex. Ka-13	<i>Challan Lash</i> (Police Form No.13) of 'X', proved by PW-8, Retd. SI Ranveer Singh
14	Ex. Ka-14	<i>Photo Lash</i> of 'X', proved by PW-8, Retd. SI Ranveer Singh
15	Ex. Ka-15	Site Plan of the place of occurrence, proved by PW-9, Sher Singh Tomar, then posted as SO at P.S. Kalan, District Shahjahanpur
16	Ex. Ka-16	Recovery memo of the mobile, Nokia Make dated 09.09.2014, proved by PW-9, Sher Singh Tomar, then posted as SO at P.S. Kalan, District Shahjahanpur
17	Ex. Ka-17	Charge sheet dated 17.09.2014, proved by PW-9, Sher Singh Tomar, then posted as SO at P.S. Kalan, District Shahjahanpur

18	Ex. Ka-18 to 27	Call detail relating to Mobile No. 8853630754, proved by PW-9, Sher Singh Tomar, then posted as SO at P.S. Kalan, District Shahjahanpur
19	Material Ex. 1	Mobile, Nokia Make
20	Material Ex. 2	Cloth by which the mobile was sealed

10. Upon conclusion of the prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C.

11. The Trial Court *vide* judgment and order dated 18.02.2020 has convicted and sentenced the appellants in the terms already indicated.

12. Aggrieved, Criminal Appeal No.1502 of 2021 has been instituted by Smt. Seema Gupta whereas Jail Appeal No.63 of 2021 has been preferred by Mukesh Gupta. Both the appeals have been heard together and proposed to be decided by this common judgment and order.

13. Heard Ms. Shweta Singh Rana, learned Counsel for the appellants in support of the present appeal and the connected Jail Appeal and Mr. Anil Kumar Mishra, learned Additional Government Advocate on behalf of the State.

14. The case rests entirely on circumstantial evidence as no one has seen the occurrence. We would, therefore, proceed to consider the inculpatory circumstances urged by the prosecution and find out if these form that unbroken chain, which leads to no other conclusion, but the appellants' guilt. On the other, we would consider the circumstances emphasized on behalf of the appellants in order to determine, if upon a realistic consideration of the prosecution case as a whole pitted against the appellants' evidence, a legitimate and probable doubt can be inferred about the prosecution story, so as to entitle the appellants to the benefit of it. It need not be gainsaid that the prosecution have to establish their case beyond all reasonable doubt.

15. The foremost is the motive that could have driven the appellants to take the life of their own daughter. Iconoclasts apart, the affinity of blood between the parents and a child would make the parents the most unlikely suspect in a child's murder. If not unique or rare, a very different kind of motive, is required for a sane and prudent person to deprive his/ her own child of the priceless thing called life. Nevertheless, there are some persons with deviant behaviour who could take such an unusual step and commit a crime of this kind, where another would never. More than that, there could be very prudent persons in the society who could take their child's life if confronted with certain kinds of circumstances that drive them counter to their ordinary instincts.

16. The evidence in this case suggests that the appellants' minor daughter, a girl of 15 years, entered into carnal relations with Pradeep Kumar, a matured man of 28 years. He stayed in the appellants' house as a tenant and earned his livelihood by privately coaching students, besides working as a teacher with the Srinagar Inter College. The carnal relationship between Pradeep and 'X' led the latter to conceive and the pregnancy had advanced. There is on record an ultrasound (obstetric) report dated 19.08.2014 proved by Dr. Manju Verma, Ex. Ka-2, which shows that on 19.08.2014, when the said report was scripted, 'X' was pregnant with a single live intrauterine foetus of 25 weeks. Dr. Manju Verma appeared in the witness-box as PW-5 and proved the aforesaid report. It is, thus, clearly established that the appellants' daughter, who was admittedly unmarried, was pregnant outside wedlock.

17. The fact of her pregnancy is further established upon a perusal of the autopsy report, Ex. Ka-4, dated 21.08.2014, which reports a gravid uterus. The autopsy report estimates the time of death as about one and a half day. The report being dated 21.08.2014, the date of death clearly works out to 19.08.2014,

when Dr. Manju Verma's report, finding her pregnant, came into existence. According to the first informant, on 19.08.2014 at 11.38 p.m., he had received a phone call on his cellphone, where Mukesh Gupta, the appellant and 'X's father, called up the informant to say that the informant's brother had illicit relations with his daughter. He had impregnated her. Mukesh Gupta then put the informant's brother, Pradeep, on line, who said that Mukesh Gupta owed him a sum of Rs.1 lac and was falsely charging him of impregnating his daughter.

18. The informant also said in the FIR that his brother sounded very scared. The informant's family and acquaintances, all left for Barah Kalan, where the appellants lived, but later he received a phone call from a certain Ramveer Singh Yadav, saying that his brother Pradeep and 'X' had been murdered. This caller said that the appellants had tied nooses around Pradeep's and 'X's neck and done both of them to death. Upon arrival at the appellants' place, the informant found the dead bodies of his brother Pradeep and 'X' inside a room, part of Mukesh's house.

19. Testifying as PW-1, he has supported the first information version about receiving a phone call from the appellant Mukesh Gupta about his brother's illicit relations with his daughter, resulting in an unwanted pregnancy. The deceased was also put on line to speak to the informant, who said things about himself as reported in the FIR. In the examination-in-chief, these statements find place and also the fact that the informant's family left for Mukesh Gupta's place along with their relatives and associates at 7 o'clock in the morning of 20.08.2014, a fact which figures in the cross-examination of PW-1. It is then said in the examination-in-chief that later on the informant received a call from Master Ramveer Singh Yadav that his brother Pradeep and 'X' have been murdered. It was upon reaching Gupta's place that he went to his brother's room, where he found the dead bodies—both his

brother's and 'X's. Mukesh was not to be found, but his wife was there, who is said to have told the informant that his brother had impregnated her daughter outside wedlock. It is also said in the informant's testimony that Mukesh's wife, that is to say, Smt. Seema Gupta, was shouting a confession that it is for this reason that she killed both of them.

20. The above evidence makes it pellucid that the appellants' daughter was believed by them to have been into an illicit relationship with the informant's brother, Pradeep, which resulted in her becoming pregnant outside wedlock. This fact was apparently believed to be true by both the appellants. As the unfolding of events would show the fact that 'X' was in the family way, the discovery on the 19th of August, 2014 apparently came as a big shock for the appellants going by the values of the society, of which they are a part. The appellants' reaction, which the informant has reported and the homicidal death of the two victims the same day that 'X's pregnancy was reported by the doctor, if indeed the appellants murdered the two victims, clearly serves as a motive for them to undertake the evil deed.

21. We must take judicial notice of the fact that since times of yore until contemporary ones, a daughter's pregnancy outside wedlock for an average Indian is a nightmare. It always invites uncontrollable reactions from parents, mostly violent, either for themselves or the daughter or the wrongdoer or both of them. The embarrassment would be there generally amongst any class of persons, but those refined by education might react in a different way, where notwithstanding disapproval, rapprochement etc., violence may or may not be there. Some might work towards avoiding the embarrassment devising some ways and means, legal or illegal. The appellants represent the ordinary and average cross-section of the Indian society, where extreme reactions to the situation are commonplace. Therefore, we are of opinion that the

appellants had motive to commit the crime charged. The forceful submission of learned Counsel for the appellants, Ms. Sweta Singh Rana, that there was no motive established by the prosecution against the appellants, cannot be countenanced.

22. The next circumstance to be considered is the fact that in the late night hours of 19th August, 2014 at 11.38 p.m., the informant received a phone call on his cellphone number 9621820180 from cellphone number 8853630754. The caller identified himself as the appellant Mukesh Gupta from Barah Kalan and abruptly reported the fact to the informant that the latter's brother Pradeep Kumar was into an illicit relationship with Mukesh's daughter. He also said that Pradeep had impregnated his daughter. This circumstance shows that soon after the discovery of his daughter's pregnancy, the appellant Mukesh Gupta was desperate and called the deceased Pradeep's brother, the informant, over his cellphone late in the night. Apparently, as evidence would show, the two were not known to each other and much less on terms where one would call the other during late night hours. The subject of the phone call and the hour it was made, speaks of desperation that the appellant Mukesh Gupta experienced. Dovetailed into the above circumstance is the fact that the appellant Mukesh Gupta made the informant's brother speak to him over cellphone.

23. The telephonic conversation between the informant and his brother did reveal that Pradeep was facing an allegation of impregnating Mukesh's daughter by the latter and his wife, the other appellant Seema Gupta, and he sounded scared. The phone call that the informant received from Mukesh was followed by another two, which must have been later in the night. The informant made Mukesh speak to his own mother. There also, the subject matter was about his daughter's pregnancy. These facts find mention in the testimony of PW-1 (examination-in-chief) and

that of his mother Smt. Siyarani, PW-2. As part of this circumstance is the fact that when the informant along with his family and associates reached Barah Kalan, the next day at 11.00 a.m., he found his brother and 'X' dead in a room, located inside the appellants' house, both strangulated.

24. The learned Counsel for the appellants has endeavoured to show that the communication over cellphone about his brother's death at 6.00 a.m. in the morning from Ramveer Singh Yadav before he reached Barah Kalan or even left for that destination, is incorrect about the timing, which would be proved from the cellphone record. She has invited our attention to Ex. Ka-21 in this connection, where the informant received a call from Ramveer Singh Yadav at 10.38 a.m. and not 6.00 a.m. on 20.08.2014. The timing of the phone call reporting the murder is not at all material, even if there is some discrepancy about it. What is material is the circumstance that the appellant Mukesh Gupta was very agitated in the evening of 19.08.2014 upon discovery of his daughter's pregnancy. He blamed it upon the deceased, which made him call the informant late at night on 19.08.2014, and, again still later in the night once again. These together with the fact that the victims were murdered sometimes between the late night hours on 19.08.2014 and the morning hours on 20.08.2014 before 11.00 a.m., and their bodies were found in a room, located inside the appellants' premises, make the picture inculpatory.

25. If the deaths were homicidal or suicidal, is the next moot question. The prosecution say that the deaths were homicidal, pointing an unerring finger towards the appellants, whereas the appellants say that the two victims died by suicide. The relevant fact here is whether the victims died by homicide or suicide. If they died by suicide, there would be no culpability for the appellants. However, if they died as a result of homicide, it would

add to the chain of circumstances appearing against the appellants.

26. The learned A.G.A. has argued forcefully that not only the victims were murdered, but it is a case of honour killing, where the appellants eliminated the two, outraged over the illicit relationship between their daughter and the informant's brother, which would disgrace them in society.

27. In order to determine whether the deaths were suicidal or homicidal, the nature of injuries as evidenced by the autopsy and the surrounding circumstances have to be evaluated.

28. The autopsy report relating to the deceased Pradeep, Ex. Ka-3, notices the following ante-mortem injury(s):

(1) A Ligature mark – 40cm x 3.0cm all around the neck continuous encircling horizontally and completely, Ligature mark is situated below thyroid cartilage 6.0cm below Rt. mastoid process & 7.0cm below chin and 6.0cm below left mastoid process, the bone of the groove reddish with echhymosed margin on section subcutaneous tissue mid the ligature mark is echhymosed.

29. The cause of death opined is 'asphyxia as a result of ante-mortem strangulation'. Though the hyoid bone has not been found fractured, but the tracheal rings are fractured.

30. The autopsy report relating to the deceased 'X', Ex. Ka-4, reports the following ante-mortem injury(s):

(1) A Ligature mark – 30.0cm x 4.0cm all around the neck continuous encircling horizontally and completely, Ligature mark is situated below thyroid cartilage 6.5cm below chin 5.5cm below Rt. mastoid process 5.6cm below Lt. mastoid process. The base of groove reddish with echhymosed margin on section subcutaneous tissue under the ligature mark is echhymosed.

31. The cause of death is asphyxia as a result of ante-mortem injuries. The tracheal rings and hyoid bone both were found fractured.

32. The autopsy doctor, Dr. Manoj Kumar Srivastava, PW-6, who entered the witness-box to prove the postmortem reports,

after a description of the injuries and whatever he found during autopsy in his examination-in-chief, has said in his cross-examination that he did not find any other external injury or abrasion, except the ligature mark on the cadavers. There was no sign of struggle. According to the autopsy report, it could be a case of suicide because there was no sign of struggle. Ex. Ka-4 does not mention any external injury. The deceased 'X' could have died by suicide. It is possible, according to the autopsy doctor, that both the deceased died by suicide.

33. The learned Counsel for the appellants has harped much on the testimony of the autopsy doctor as well as the evidence of PW-3 and PW-4 to submit that no injuries were found on the dead bodies. She has invited our attention to the testimony of PW-3, where in his cross-examination, this witness, Narendra Kumar, has said:

"लाश को मैंने देखा था लेकिन उस पर कोई चोट नहीं थी।"

34. The learned Counsel for the appellants has also emphasized that the autopsy doctor has observed that the deceased Pradeep Kumar was a well built man with a heavy body structure. It is submitted by the learned Counsel for the appellants with great force that the lack of any other injury, except the ligature mark that resulted in deaths, shows that the deceased, particularly Pradeep, died without struggle. This in turn, according to the learned Counsel, would decisively indicate that there was no altercation, employment of force or struggle, which is characteristic of a murder by strangulation. The absence of no other injury, except the fatal wound, indicates that the death was suicidal. To a pointed query by us that strangulation was incompatible with a case of suicide and that it was suggestive of homicide, the learned Counsel for the appellants impressed upon us the fact that medical jurisprudence recognized cases, where suicide could be committed by strangulation. She has relied upon

the celebrated treatises on medical jurisprudence, entitled '**A Textbook of Medical Jurisprudence and Toxicology**' by **Jaising P Modi, Twenty Seventh Edition**. She has invited our attention to the tabulated differences between telltale signs of death by hanging on one hand and strangulation, on the other, mentioned in Chapter 20—'*Deaths from Asphyxia*' at Pages 586 and 587. She has referred to the first item in the table, which says that hanging is mostly suicidal, whereas strangulation is mostly homicidal. The learned Counsel for the appellants urges that this comparison of difference shows that strangulation is not always consistent with a case of homicide. There could be suicidal strangulation as well. In order to further impress upon us the aforesaid fact, the learned Counsel has drawn our attention to the following passage in Modi at Page No.585:

“20.3.6.2 Whether the Strangulation was Suicidal, Homicidal or Accidental

Suicidal strangulation is not very common, though sometimes cases are met with. In these cases, some contrivance is always made to keep the ligature tight after insensibility supervenes. This is done by twisting a cord several times round the neck and then tying a knot, which is usually single and in front or at the side or back of the neck, by twisting a cord tightly by means of a stick, stone or some other solid material, or by tightening the ends of a cord by tying them to the hands or feet or to a peg in a wall or to the leg of bed. In such cases, injuries to the deep structures of the neck and marks of violence on other parts of the body are, as a rule, absent.”

35. The learned A.G.A, on the other hand, has submitted that there is no doubt about the fact that the deceased died by strangulation, which, under the overall circumstances, is consistent with homicide; not suicide.

36. We have given a thoughtful consideration to the matter. Medico-legal opinion generally accepts the position that strangulation is mostly consistent with a case of homicide and suicidal strangulation is rare. The exposition in Modi, relied upon eloquently, accepts it for a fact that suicidal strangulation is uncommon. In cases where suicidal strangulation may have happened, Modi acknowledges that some contrivance is always employed to keep the ligature tight until time that consciousness

is lost and life ebbs away. Modi has clearly opined that, "*This is done by twisting a cord several times round the neck and then tying a knot, which is usually single and in front or at the side or back of the neck, by twisting a cord tightly by means of a stick, stone or some other solid material, or by tightening the ends of a cord by tying them to the hands or feet or to a peg in a wall or to the leg of bed*". These are the contrivances that must be employed in order to keep the ligature tight until fatal effect sets in. In this case, no such contrivance was found around the dead bodies.

37. It is not that there was a cord or a ligature that was attached to a peg or the bedpost in order to exert constant pressure consistent with a case of self-strangulation, and, *a fortiori* suicide. The autopsy doctor, PW-6, has no doubt testified to the fact that there is no other injury or sign of struggle on the dead body. He has opined that going by the autopsy report, it could be a case of suicide because there was no sign of struggle. He has also opined that in both cases, that is to say, the cases of Pradeep and 'X', it is possible that deaths were caused by suicide. The testimony of PW-6 on this point is after all opinion evidence of an expert. Here also, the cross-examination does not show that it was put to the doctor, based on what Modi has opined, if in the absence of a contrivance to sustain the fatal pressure through ligatures, it could still possibly be a case of death by suicide in one or both the cases. Therefore, the doctor's opinion too does not have any decisive bearing on the point, where any inference about a case of that rare kind, that is self-strangulation, can be drawn. In this connection, reference may be made to **Godabarish Mishra v. Kuntala Mishra and another, (1996) 11 SCC 264**, where it was held:

"23. In our view, the case of committing suicide by self-strangulation by the deceased must be ruled out. Both in *Modi's Medical Jurisprudence and Toxicology* and in *Talyor's Principles and Practice*

of Medical Jurisprudence, to which our attention was drawn by Mr Ranjit Kumar, it has been clearly indicated that suicide by self-strangulation is very rare. For committing suicide by self-strangulation, the person committing suicide must take aid of a contrivance so as to ensure application of sufficient force until death by strangulation. Without such contrivance, sufficient force cannot be applied because initially with the application of force, insensitivity will develop for which the hands pulling the ends of the string must get loosened. In the instant case, no contrivance was noticed either by PW 6 and PW 7 who had come to examine the deceased on hearing the alarm. The accused has also not seen any contrivance at the place of incident and in her statement under Section 313 Criminal Procedure Code, she has not disclosed any fact, which was within her special knowledge, in support of a case of suicide by self-strangulation.

25. In the instant case, it has been clearly established that the death occurred on account of strangulation. Simply because the doctor (PW 11) noticed injuries on the deep muscle of the neck of the deceased at the time of holding post-mortem, it cannot be held that such injuries noticed by the doctor had convincingly established that it was a case of death by self-strangulation, because of what has been opined by Modi. We may indicate here that suicide by self-strangulation, according to the learned author, is a rare incident. Such view has also been expressed in *Taylor's Principle and Practice of Medical Jurisprudence*. It is not unlikely that for want of large number of cases of suicide by strangulation to be studied carefully, various features associated with such suicide could not be indicated more precisely. That apart, opinions expressed in the said treatise are, at best, opinions of expert, which though deserve due consideration with respect, cannot be held absolutely conclusive particularly, when other evidences clearly established give a contra-indication.

26. It may also be indicated here that both in Modi's book on medical jurisprudence and Taylor's book on medical jurisprudence, it has been categorically stated that for committing suicide by self-strangulation, the aid of a contrivance to maintain force till death is got to be taken, otherwise, it is not possible to maintain the force required. The absence of such contrivance clearly rules out any possibility of suicide by self-strangulation. In the aforesaid fact, excepting the accused no other person had any opportunity whatsoever to cause the murder of the deceased. The circumstantial evidence in this case are absolutely clinching in establishing the complicity of the

accused in committing the murder of the deceased. The view taken by the High Court is clearly against the weight of the evidence and cannot be held to be a possible view which could have been taken."

38. We, therefore, hold that this is a commonplace homicidal death by strangulation and certainly not that uncommon and rare case of suicidal strangulation.

39. The circumstance that the homicides happened in a room, that is part of the appellants' premises, about which no alternative explanation as to who, besides the appellants, had access or could have committed homicide, is very relevant in the chain of circumstances.

40. PW-1, Brajesh Kumar, in his examination-in-chief has testified:

"..... फिर मैं प्रदीप के कमरे पर आया। मेरे भाई की और 'x' की लाश कमरे के अन्दर पड़ी थी।..."

41. PW-2, Smt. Siyarani, has stated in her examination-in-chief:

"..... जब हम लोग मुकेश के मकान पर वीराकलाँ पहुँचे तो मेरा लड़का प्रदीप मुकेश के अन्दर घर के कमरे में मरा पड़ा था तथा दूसरी तरफ उसकी लड़की 'x' मरी पड़ी थी।....."

42. PW-3, Narendra Kumar, has testified in the examination-in-chief about the place, where the dead bodies have been found, thus:

"..... और 11 बजे बारह कला पहुँचे जब हम लोग मुकेश व सीमा के घर पहुँचे तो देखा प्रदीप मरा पड़ा था उसके गले कपड़ा लिपटा था तथा पड़ोस के ही सीमा की बेटी 'x' का भी लाश पड़ी थी उसके गले में भी कपड़ा बंधा था।....."

43. Likewise, PW-4, Rakesh, has stated in his examination-in-chief:

"..... सभी लोग सफेद गाड़ी से बाराकला को निकले मैं भी था, बाराकला सुबह करीब 10-11 बजे के बीच में पहुँचे, मुकेश गुप्ता के मकान में बहुत भीड़ थी तथा पुलिस भी मौजूद थी उसके बाद हम लोग मकान के अन्दर गये तथा एक कमरे में गले में फन्दा लगी दो लाश एक प्रदीप की थी तथा दूसरी मुकेश गुप्ता की लड़की की थी....."

44. In the cross-examination of some of these witnesses, though endeavour has been made to ascertain the geographical location of Mukesh Gupta's house or the size of the room, where the dead bodies were found lying, there is neither suggestion given nor anything elicited from the prosecution witnesses to contradict their consistent stand that the dead bodies were lying inside a room located on the appellants' premises. The other things apart, even if the room, where the dead bodies were found, was tenanted to the deceased Pradeep, it was an integral part of the appellants' premises. Therefore, some explanation has to be given by the appellants about the circumstances in which Pradeep and their daughter were murdered, consistent with their innocence. This is particularly so as both the dead bodies were lying in the same room within the appellants' premises.

45. A careful perusal of the site-plan shows that Pradeep's rented room is to the west of the room where the dead bodies were found. It is, therefore, apparent that the room where the dead bodies were found, was not the room in which Pradeep lived, but a part of the premises in the appellants' occupation. The dead bodies have been found inside a room located on the appellants' premises, which too was not in Pradeep's exclusive tenancy. Burden under Section 106 of the Evidence Act would lie upon the appellants to explain the circumstances, in which the deceased met with a homicidal death. This is so because it is the appellants, who are the owners and inmates of the house and would have special knowledge of the fact, which no one else has seen or could possibly see.

46. Admittedly, this is a case of circumstantial evidence. So far as the prosecution are concerned, none amongst those who have testified for the prosecution or could have testified for them, have seen what have happened inside the appellants' house on the fateful night of 19/20th August, 2014, leading to Pradeep and 'X's

homicidal death. It is, therefore, for the appellants to explain the circumstances in which the homicide was committed. A failure to explain the circumstances or giving an explanation, which is not found true, would add a link to the circumstances, pointing to the appellants' guilt. In **Gajanan Dashrath Kharate v. State of Maharashtra, (2016) 4 SCC 604**, it was held by the Supreme Court:

"13. As seen from the evidence, appellant Gajanan and his father Dashrath and mother Mankarnabai were living together. On 7-4-2002, mother of the appellant-accused had gone to another Village Dahigaon. The prosecution has proved presence of the appellant at his home on the night of 7-4-2002. Therefore, the appellant is duty-bound to explain as to how the death of his father was caused. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer. On the date of the occurrence, when the accused and his father Dashrath were in the house and when the father of the accused was found dead, it was for the accused to offer an explanation as to how his father sustained injuries. When the accused could not offer any explanation as to the homicidal death of his father, it is a strong circumstance against the accused that he is responsible for the commission of the crime."

47. In order to give an explanation about the crime committed on their premises, the appellants have come forward under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') and put in separate statements under Section 233(2) Cr.P.C. The explanation offered by the two appellants are complementary. The appellant Seema Gupta in her written statement has said that her minor son Vagesh, aged 12 years, had sustained burn injuries 3-4 days after Holi from heated oil and he was undergoing treatment. In the night intervening

19/20.08.2014, she was asleep on the upper floor of her house along with her son Vagesh aged 12 years, daughters Babita aged 10 years, Sarita aged 8 years and son Kuldeep aged 6 years. Her daughter 'X' was asleep on the ground floor.

48. Her husband at the relevant time owned a Maxi Mahindra Mini Truck, bearing registration No. UP-27T-5190. He had left for Jaswant Nagar, Etawah with a herd of goats to sell them off in some kind of a Wednesday market there. When the appellant Seema Gupta woke up on the following morning, she called out her daughter 'X', but there was no response. When she came down to the ground floor, she saw Pradeep and 'X' lying dead in Pradeep's room. She informed her husband over his cellphone No. 9794339343 from a P.C.O. Upon his bidding, she called the Barah Kalan Police Chowki, P.S. Kalan, informing them of the two deaths. The Police detained her at the Chowki and informed Pradeep's family members. After their arrival, the Police concocted a story and got this appellant and her husband implicated in the crime. She has further said that Cell No. 8853630754 does not belong to her or her husband. The Police's story is fabricated and she is innocent.

49. Likewise, the appellant Mukesh Gupta in his statement under Section 313 read with Section 233(2) Cr.P.C. has said that he had left home in his Maxi Truck, bearing registration No. UP-27T-5190, along with driver Jaiveer son of Ravindra, on 19.08.2014 with a herd of goats to sell at Jaswant Nagar, Etawah in the Wednesday market there. He received a phone call over his Cell No. 9794339343 from his wife that his daughter 'X' and Pradeep's dead bodies were lying in Pradeep's room. He promptly advised his wife to inform the Police. His wife informed the Barah Kalan Police Chowki, P.S. Kalan. The Police called up Pradeep's home at Kanpur Nagar and also informed S.O. P.S. Kalan. In the early morning hours, the Police carried off both the dead bodies to

P.S. Kalan and upon arrival of Pradeep's family members, concocted a story, implicating him and his wife in a false case. He has then said that his wife was sleeping with the children on the upper floor and that Pradeep and 'X' had committed suicide. This appellant has also stated that mobile No. 8853630754 does not belong to him and the Police have concocted the entire story.

50. The appellants entered defence and examined two defence witnesses, to wit, Jaiveer son of Ravi, DW-1 and Sone Lal @ Sonu son of Om Prakash, DW-2.

51. Jaiveer is the driver, who is said to have driven the appellant Mukesh Gupta on his trade journey to Jaswant Nagar Etawah to sell off goats in the Wednesday market there. DW-1 has testified in his examination-in-chief thus:

".....मैं प्राइवेट चालक हूँ तथा मेरे पास कई वर्षों से वाहन चलाने का लाइसेंस है करीब 5-6 वर्षों से हैवि वाहन चलाने का लाइसेंस है हाज़िर अदालत मुल्जिम मुकेश गुप्ता के पास मैक्सी मेहिन्द्र छोटा ट्रक UP 27 T 5190 था जिसको मैं मुकेश गुप्ता के साथ रहकर चलाता था, दिनांक 19-8-2014 को मंगलवार के दिन धर्मेन्द्र व्यापारी की बकरियाँ लोड करके जसवंतनगर इटावा लेकर मुकेश गुप्ता के साथ गया था सुबह करीब चार बजे जसवंतनगर के पास ढावे पर रोक गये थे। सुबह के समय मुकेश गुप्ता के मोबाईल नम्बर 9794339343 पर मुकेश गुप्ता की पत्नी सीमा गुप्ता का फोन आया जिस पर मुकेश गुप्ता ने उन्हें चौकी पर पुलिस को सूचना देने को कहा था तथा मुझे बताया था कि 'x' और प्रदीप ने प्रदीप के कमरे में लार्शे पड़ी होने की बात बतायी है उस दिन सुबह बुधवार था....."

52. In his cross-examination, DW-1 has said:

"मैं तारीख पता चलने पर आया हूँ पुलिस ने विवेचना के दौरान पुलिस ने मुझसे कोई पूछताछ नहीं किया था और न ही मैंने पुलिस को कुछ बताया था अब मुकेश गुप्ता का ट्रक उनके पास नहीं है। बीक चुका है। घटना के दो तीन माह बाद बिक गया था इस घटना के बाद भी मैं ट्रक चलाता रहा मुझे वकील साहब ने कोई गवाही नहीं सिखाई है। 'x' प्रदीप जब मरे थे तब मैं मौके पर नहीं था ट्रक लेकर गया था यह कहना गलत है कि मैंने जो भी बयान दिया वह मुकेश गुप्ता के वकील साहब के सिखाने की वजह से झूठा दिया है। यह भी कहना गलत है कि दिनांक 19-8-2019 को शाम के वक्त मुकेश गुप्ता के साथ बकरियाँ लेकर जसवंत नगर इटावा न गया हो।...."

53. DW-2 Sone Lal @ Sonu, who is a brother (Sadhu) of Mukesh Gupta, has endeavoured to explain how the Police

planted Cell No. 8853630754 by making him and his mother sign blank papers. He has stated in his examination-in-chief thus:

".... हाज़िर अदालत अभियुक्त मुकेश गुप्ता मेरे साढ़ है 'x' की मृत्यु के करीब 15 दिन पश्चात मैं अपनी मां के साथ मुकेश गुप्ता के घर पर व उनके छोटे छोटे बच्चों की देखभाल के लिए था मेरी पत्नी भी वही थी पुलिस वाले मुकेश गुप्ता के घर पर आये और मुझसे व मेरी मां से एक साथ कागज पर दस्तखत कराये थे लेकिन मैंने उन्हें कोई मोबाइल सिम पड़ा हुआ या बिना सिम का नहीं दिया था। मुझसे व मेरी मां से दस्तखत कराते समय कागज सादा था। कोई लिखापट्टी नहीं हुई थी। 'x' की मृत्यु के समय मुकेश गुप्ता के साथ मोबाइल नं० 9794339343 रहता था। मुकेश गुप्ता का मोबाइल नं० 8853630754 नहीं था। किसका था? मुझे नहीं पता।

पत्रावली में संलग्न कागज सं० 7 क जो प्रदर्श क-16 हैं, पर मेरे हस्ताक्षर बने हैं। तथा मेरी मां के भी हस्ताक्षर बने हैं लेकिन उस पर सारी लिखा पट्टी पुलिस ने बाद में थी। मैंने कोई मोबाइल फोन पुलिस को नहीं दिया था और न ही किसी पुलिस वाले ने मुझसे पूछताछ की थी।"

54. In his cross-examination, DW-2 has stated:

"यह कहना गलत है कि मोबाइल नं० 8853630754 मैंने पुलिस को दिया हो।

यह कहना गलत है कि पुलिस ने फर्द की लिखा पट्टी करके सुनाकर मुझसे उस पर हस्ताक्षर कराये हो।"

55. The appellants have endeavoured to come with a consistent explanation, or rather an alibi, demonstrating their absence from the scene of crime – in case of the appellant Mukesh Gupta from his house and village, and in case of Seema Gupta, from the part of the house, where the crime was committed. We are afraid that it cannot be accepted.

56. So far as Mukesh Gupta is concerned, who has pleaded his absence from home in his alibi, relies on the testimony of the driver, who is said to have driven him to Jaswant Nagar, Etawah with a herd of goats belonging to Dharmendra, a trader in livestock on Tuesday, the 19th of August. No doubt, this witness has supported the appellants' case of driving to Jaswant Nagar, Etawah with goats belonging to Dharmendra, which Mukesh would sell in the Wednesday market there, as well as the case of Mukesh receiving a call from his wife at 4.00 a.m. in the morning of 20th about the crime, but it is a well regarded principle that if the

prosecution have established the presence of the accused at the scene of crime, alibi is a plea which has to be strictly proved by the defence. Now, in this case, proof of Mukesh Gupta's presence at the scene of crime has been established by the prosecution witnesses, PW-1 and PW-2, that is to say, Brajesh Kumar, the deceased Pradeep's brother and PW-2, Smt. Siyarani, Pradeep's mother. It has been categorically said by these witnesses in their examination-in-chief that Mukesh made Pradeep speak to both of them over cellphone.

57. PW-1 has testified to the fact that a call was received on his cellphone No. 9621820180 from cellphone No. 8853630754. This cellphone may not be using a simcard issued in the name of Mukesh Gupta, but was certainly in his use. The Police recovered this SIM number on 09.09.2014, lodged in a mobile Nokia, black coloured handset, from Sonu Gupta, Mukesh Gupta's brother-in-law (*Sadhu*) and placed it under a seal. The recovery memo, relating to this mobile phone carrying cell No. 8853630754, was prepared in the presence of two witnesses, to wit, Yogesh Kumar Gupta and Gyan Devi Gupta. The calls, that PW-1 received on his cellphone No. 9621820180 from Mukesh Gupta, according to the call detail record, Ex. Ka-19, were two in number on 19.08.2014. The first call was made at 11.53 p.m. and the other at 11.55 p.m. This call detail record has been proved by the Investigating Officer, PW-9, in his testimony sufficiently to establish its veracity. It was this mobile phone, which was used by Mukesh Gupta to speak to PW-1, the first informant. Even if it be assumed that PW-1 was not familiar with Mukesh Gupta's voice, he was certainly familiar with his brother, the deceased Pradeep's voice. The conversation, that PW-1 had with Mukesh and Pradeep through these calls, is reported by PW-1 in his examination-in-chief thus:

"दि० 19-8-2014 को रात 11.38 पर मेरे फोन नं० 9621820180 पर फोन नम्बर 8853630754 से फोन आया। पहले कहा कि सीमा गुप्ता बोल रही थी। फिर कहा कि मुकेश गुप्ता बाराकलां बोल रहा हूँ और इन्होंने बताया कि आपके भाई प्रदीप

कुमार के मेरी लड़की के साथ नाजायज सम्बन्ध है। प्रदीप ने मेरी लड़की को गर्भवती बना दिया है। फिर मुकेश गुप्ता ने मेरे भाई प्रदीप से मेरी बात करायी। प्रदीप ने मुझे बताया कि मेरे मुकेश गुप्ता पर एक लाख रुपये उधार के हैं। जिसकी मैंने उनसे मांग की थी। तब उन लोगों ने मुकेश गुप्ता व सीमा गुप्ता ने यह आरोप लगा दिया कि तुमने हमारी लड़की 'x' को बिन ब्याहे गर्भवती बना दिया। उसके बाद मेरे भाई से फोन ले लिया गया। मेरा भाई बात करते समय बहुत डरा-डरा था। बाद में फिर फोन आया 2 बार आया तब मेरी माँ से बात हुई दुबारा फोन आया तो कहा कि मेरी बेटी को गर्भवती बना दिया है।"

58. PW-2, who is PW-1's mother, also had a conversation with Mukesh Gupta and Pradeep on PW-1's cellphone No. 9621820180 with Mukesh speaking using cellphone bearing No. 8853630754. This call was made within minutes of the first call in the night of 19th August. PW-2, Smt. Siyarani, has reported the subject matter of the call in her examination-in-chief as follows:

"दिनांक 19.8.2014 को रात में फोन आया था। मेरे बड़े लड़के ब्रजेश के पास, फोन आया था। फोन मुकेश गुप्ता का था। मेरे लड़के ने बात की उसके बाद मेरे लड़के ने मुकेश से मेरी बात करायी मुकेश ने मुझसे कहा कि तुम्हारे लड़के प्रदीप ने मेरी लड़की को गर्भवती बना दिया है। मैंने कहा कि जो भी बात हुई हो मैं सुबह आ जाऊंगी फिर मैंने मुकेश से कहा कि प्रदीप से मेरी बात करा दो तो प्रदीप से मेरी बात हुई तो मुकेश ने मेरे लड़के प्रदीप को फोन दिया। मैंने उधर से कहा कि बेटा तुम कहां हो? प्रदीप ने बताया कि मैं मुकेश गुप्ता के घर में हूँ। मैंने कहा कि इतनी रात में तुम वहां क्या कर रहे हो तो प्रदीप ने बताया कि मेरे एक लाख रुपया मुकेश पर उधार के हैं जो मैंने मांगे हैं वही रुपये देने के लिए मुझे आज मुकेश ने अपने घर बुलाया था। जब मैं घर आया तो मुकेश ने अपनी बेटी के साथ मेरे गलत सम्बन्ध होने का। आरोप मुझपर लगाया है और कह रहे हैं कि हम तुमको जान से मार देंगे। मेरा लड़का बहुत घबराया हुआ था और कह रहा था कि अम्मा जल्दी आ जाओ नहीं तो ये लोग हमें मार देंगे।"

59. In his cross-examination, PW-1 has stood by his case that he received the phone call from Mukesh Gupta using mobile No. 8853630754 in the dead of night on 19.08.2014, where he spoke whatever has been extracted hereinabove, and at the same time made Pradeep speak to PW-1. Mukesh also made Pradeep, the deceased, speak to PW-2, who is PW-1's mother as well as Pradeep's. These facts go to establish that in the late night hours of 19th August, Pradeep and Mukesh were together. Since Pradeep died in the night intervening 19/ 20.08.2014 at Barah Kalan in Mukesh's house, it is evident that Mukesh was present in

his house about time when the crime was committed. The *alibi* that Mukesh has put forward of leaving Barah Kalan to sell goats, belonging to a cattle trader, on his Mini Truck for Jaswant Nagar, Etawah, does not inspire confidence. The reason, all the more why the testimony of DW-1, Jaiveer, the driver, who claims to have driven Mukesh to Jaswant Nagar on 19th, does not inspire confidence, is that except for his bald assertions, there are no documents to evidence the journey to Jaswant Nagar. Taking it that there would be no consignment notes or GST papers for the stock that the two were carrying to Jaswant Nagar, considering the petty nature of their trade, there would certainly be toll receipts from different toll plaza or tollbooths lying on way, a charge always levied on vehicles moving on highways. Even if there was no tollbooths on way, there would be some other documents, such as a fuel receipt of the relevant date from a distant place to show that the journey, in fact, was undertaken. In the absence of any document to prove that the journey to Jaswant Nagar was, in fact, undertaken, may be through a substantial distance, if not all the way, it is difficult to believe the bald testimony of DW-1 for the standard to prove an *alibi* are by means of evidence of the highest quality. The appellant Mukesh Gupta's presence at the place and time of crime being established, the failure of his *alibi* becomes a further damning circumstance in the chain.

60. So far as the other appellant, Seema Gupta is concerned, she has urged a case that she was fast asleep in a room on the upper floor of the house along with four of her children and came to know of the crime in the morning, when she got up and called her daughter 'X'. It is, indeed, unbelievable that 'X', who herself was a minor, aged 15 years and was discovered to be pregnant in a test done earlier in the day on 19th at Budaun, would have been left by the appellant Seema Gupta to sleep by herself on the ground floor, a part of the house where Pradeep was staying in his room. Pradeep was after all blamed of impregnating 'X'.

61. The learned Trial Judge has also adopted this reasoning to reject the appellant Seema Gupta's case of *alibi* placing her away from the crime scene and we wholeheartedly agree with the learned Trial Judge's reasoning on this score. Seema Gupta's alibi too having failed the circumstance that homicides happened in a room, that is part of the appellants' premises, stares in the appellants' face. The appellants having failed to come up with a cogent explanation supported by necessary evidence about the twin homicides inside their house, the fact serves as an important link in the chain of evidence against the appellants, speaking about their complicity.

62. The next circumstance is an extrajudicial confession by the appellant, Seema Gupta, which though in itself a weak evidence, but read together with the other circumstances, may have decisive bearing on the fact-in-issue. It has come in the testimony of PW-1, that is to say, in his examination-in-chief that when he, along with his father, mother and other associates, reached Barah Kalan, he found his brother's and 'X's' dead bodies inside the deceased Pradeep's room. The appellant Mukesh was not around, but his wife, that is to say, Seema Gupta was there and she said to the witness that his brother had impregnated her daughter outside wedlock and for that reason she did them to death. In the cross-examination, though this witness has acknowledged that the informant and his associates went to Police Station Kalan at 11.00 a.m. and from there they proceeded to Village Barah Kalan, where they found the Police present, who had apprehended the appellant Seema Gupta before 11.00 a.m., but there is nothing to contradict that Seema Gupta did not confess to this witness or the other, who are *ad idem* about the fact.

63. The Investigating Officer, PW-9, in his examination-in-chief and cross-examination, has stood by the fact that after the case

was registered at Police Station Kalan at 12.30 p.m. on 20.08.2014, the Police left for Village Barah Kalan, where they did not find the appellant Mukesh Gupta.

64. The testimony of PW-1 as well, who says in his cross-examination that the Police had apprehended Seema in words, '*lekin Seema ko police pakade hue thi*', renders the testimony of PWs-1, 2, 3 and 4 consistent that when they reached the place of occurrence, Seema was sitting somewhere between the two dead bodies and confessing to having murdered Pradeep and 'X', a confession after all in police custody.

65. Seema Gupta in her statement under Section 313 read with Section 233(2) Cr.P.C. has taken the stand that upon discovery of the deaths of 'X' and Pradeep, she immediately informed her husband, who was away to Jaswant Nagar of the mis-happening. He advised her to immediately inform Police *Chowki* Barah Kalan, which she did, but the Police detained her at the police *chowki*. This assertion finds support from PW-1's admission of the fact in his cross-examination that Seema had been apprehended by the Police before 11.00 a.m.

66. It seems that Seema was apprehended by the Police before 11.00 a.m. without a formal arrest and available at home by time the informant and his associates arrived there. The confessions which PW-1 to PW-4, therefore, heard from Seema about having murdered the two victims, were apparently made while in police custody, may be held under a suspicion and before the lodging of an FIR. These confessions would be inadmissible under Section 26 of the Evidence Act.

67. It was submitted on behalf of the State by the learned A.G.A. that confession made to a police officer is inadmissible after investigation commences, that is to say, after registration of the FIR. It is urged that before a person is accused of an offence,

a confession made by him would not be hit by Section 25 of the Evidence Act. The FIR was registered in this case at 12.30 p.m. and these confessions were made at about about 11.00 a.m. Even if Seema was held as a suspect, she was in the custody of a police officer within the meaning of Section 26 of the Evidence Act.

68. There is a distinction between a confession made to a police officer and a confession made by a person while in the custody of a police officer. The former is governed by Section 25 of the Evidence Act and the latter by Section 26. The confession referred to under Section 26 may be made to any person other than a police officer but while in the custody of one, whereas that under Section 25 is necessarily one made to a police officer. The confession under Section 26 may be made to any other person while in police custody, or may be to a police officer himself, but in the custody of the Police. The scope of Section 26 is wider because the embargo there applies to the case of a person, who is in the legal sense of the term not yet accused of an offence, but in the custody of the Police, which may be as a suspect pending ascertainment of facts or the formal registration of a crime.

69. By contrast, Section 25 would be attracted to a case where the person, making the confession is accused of an offence, may be as the result of an FIR registered against him or being accused pending investigation. He may or may not be in custody. Therefore, the scope of Sections 25 and 26 is very different. Here, what is attracted is Section 26 of the Evidence Act, where Seema was apparently in police custody as a suspect, when she made the confessions attributed to her by PWs-1, 2, 3 and 4. The FIR was registered later in the day. Nevertheless, Seema apparently being in police custody, the extrajudicial confessions attributed to her cannot be read against her, unless these were in the immediate presence of a Magistrate, which is not the case here.

We are, therefore, of opinion that the circumstance about the extrajudicial confession cannot be read against the appellants in this case.

70. The learned A.G.A. has placed reliance upon **Ishwari Lal Yadav and another v. State of Chhattisgarh, (2019) 10 SCC 437**, where speaking for a three Judge Bench of their Lordships of the Supreme Court, R. Subhash Reddy, J. held

"21. The confessional statements made to the police by the appellants, cannot be the basis to prove the guilt of the accused but at the same time there is no reason to discard the confessions made to the independent witnesses at the time when Chirag's body was found, prior to the arrival of police. It is true that extra-judicial confession, is a weak piece of evidence but at the same time if the same is corroborated by other evidence on record, such confession can be taken into consideration to prove the guilt of the accused. In the case on hand, the evidence from independent witnesses is in one voice and consistent. The medical evidence on record also substantiated the case of the prosecution. In addition to the same, PW 2 and PW 3, who are the parents of the deceased have identified the clothes, which the deceased child was wearing on the date of missing. It is also clear from the evidence that the skeletal remains were removed. They have also found the cloth pieces, attached to skeletal remains. The colour of such cloth pieces was tallied with the description in the missing report lodged by PW 2 earlier on 4-3-2010. As such it is clearly proved beyond any reasonable doubt that the appellants are responsible for the offence alleged against them."

71. We must note that **Ishwari Lal Yadav** (*supra*) was a case where the confessions were made to an independent witnesses before the Police arrived. It was not a case where the confessor was in police custody even as a suspect. The principle in **Ishwari Lal Yadav**, therefore, has no application in the context of the present case, where Seema was in the custody of the Police, albeit as a suspect, when she is said to have made the confessions. We are of opinion that the confessions were hit by Section 26 of the Evidence Act and cannot be read against her;

much less against Mukesh Gupta. To this extent, we do not agree with the reasoning of the learned Trial Judge to the contrary.

72. The last circumstance to be noticed is the phone call, which PW-1 received from a certain Master Ramveer Singh Yadav. He was apparently a colleague of the deceased Pradeep and called his brother, PW-1, at 6.00 a.m. in the morning and informed him that his brother and 'X' have been done to death by the appellants. PW-1 in his examination-in-chief has testified:

"..... उसके बाद मैं अपनी माता जी व पिता ईश्वर दयाल व राकेश कटियार अशोक कटियार, नारेन्द्र कटियार, प्रदीप कटियार को लेकर बोलैरो गाड़ी में बाराकलां आये उसी बीच मुझे मेरे भाई के साथ पढ़ाने वाले मास्टर रामवीर सिंह यादव का फोन मिला। तो उन्होंने सूचना दी कि तुम्हारे भाई प्रदीप का व 'x' का Murder हो गया है। उन्हीं दोनों को मुकेश गुप्ता व उसकी पत्नी सीमा ने गले में फन्दा डालकर हत्या कर दी है फिर मैं प्रदीप के कमरे पर आया..."

73. In his cross-examination, this witness has said:

".....जिन मास्टर जी (रामवीर सिंह यादव) का फोन आना मैंने बताया है उनका नम्बर 7525079412 था। यह फोन करीब 6 बजे सुबह मेरे मोबाइल पर आया था। मुझे ध्यान नहीं है कि उपरोक्त फोन मोबाइल वाली बातें सही हैं या गलत हैं।...."

74. Though, in the last line of his cross-examination noted, he has said that he does not remember if the fact about the mobile call from Ramveer Singh Yadav is correct, that is a general reference to the mobile call earlier received from the appellant Mukesh and Master Ramveer Singh Yadav. This inconsistency does not derogate from the fact that the call from Master Ramveer Singh Yadav, speaking through his mobile No. 7525079412, was received by PW-1 at 6.00 a.m. in the morning, intimating him that his brother and 'X' had been murdered by the appellants. The receipt of this call by the informant on his mobile No. 9621820180 is evident from a perusal of the call detail records, Ex.21, where the incoming call on PW-1's phone number from cell No. 7525079412 is shown in the call detail records as one received at 10.35 a.m. Therefore, the call was received by PW-1 from Master

Yadav, but not at 6.00 a.m. It was received at 10.35 a.m. on 20.08.2014. The fact of PW-1 receiving the call from Master Ramveer Singh Yadav is, therefore, proved as well as the information, which PW-1 received over his mobile phone from Master Ramveer Singh Yadav, though not the fact if the information was indeed correct that the twin murders had been committed, as reported by Ramveer Singh Yadav. That for a fact was discovered to be true later on, after PW-1 and the other prosecution witnesses reached the place of occurrence. The circumstance, therefore, proved is that there was a phone call received by PW-1 from Master Ramveer Singh Yadav, a colleague of the deceased Pradeep, to the effect that 'X' and Pradeep had been murdered by the appellants, which to the extent of the twin murder being committed was found true for a fact.

75. The following circumstances have, therefore, been proved by the prosecution to the hilt:

(a) that Pradeep was a tenant in a part of the appellants' house;

(b) that PW-1, the deceased Pradeep's brother received a phone call from mobile No. 8853630754 in the night of 19.08.2014, where the caller identified himself as the appellant Mukesh Gupta and accused the deceased Pradeep of impregnating his unmarried daughter, and made Pradeep talk to PW-1 over phone. The call was repeated once and Pradeep also spoke to PW-2, calling from the same number on PW-1's number;

(c) that the phone, bearing mobile No. 8853630754, was recovered by the Police from the appellant Mukesh Gupta's house from the custody of one Sonu, a brother-in-law of the appellant Mukesh, who was staying in the premises;

(d) that Pradeep was alive on 19.08.2014 until the last call received by PW-1 at 11.56 p.m.;

(e) that Pradeep and 'X' died sometime between the midnight of 19.08.2014 and the morning hours of 20.08.2014, certainly before 11.00 a.m. on 20.08.2014 and the dead bodies of Pradeep and 'X' were found in a room within the appellants' premises;

(f) that 'X', a girl of 15 years, had been examined by a gynecologist, Dr. Manju Verma, at Budaun on 19.08.2014 and though unmarried, she was found pregnant in the medical report dated 19.08.2014;

(g) that Pradeep and 'X' were both murdered in the night intervening 19/ 20.08.2014, soon after discovery of her pregnancy outside wedlock, where Pradeep was suspected by the appellants of impregnating 'X';

(h) that the cause of death is strangulation and there is no such extraordinary contrivance, which may show the strangulation to be suicidal;

(i) that there was a strong motive in the totality of circumstances for the appellants to murder Pradeep and 'X'; and,

(j) the fact that the appellants have not come up with an explanation about the twin murders within the confines of their premises, a fact exclusively within their knowledge and failed to discharge their burden in this regard under Section 106 of the Evidence Act.

76. All these circumstances put together, in our considered opinion, establish a complete and unbroken chain, which are only consistent with the guilt of the appellants and no other possible hypothesis. We are, therefore, of opinion that the appellants have

been rightfully convicted by the learned Trial Judge of the offence punishable under Section 302/34 IPC. The minimum permissible sentence has been awarded, which, in our opinion, is condign.

77. We place on record our appreciation for the very able assistance rendered in these appeals by Ms. Sweta Singh Rana, who made the best out of a difficult cause for her clients.

78. In the result, both the appeals fail and are **dismissed**. The appellant Smt. Seema Gupta is on bail. She will surrender within a period of **two weeks** of the date of this judgment, failing which the Chief Judicial Magistrate, Shahjahanpur, shall cause her to be taken into custody and commit her to prison to serve out her sentence. The bail bonds furnished by the appellant Smt. Seema are cancelled and the sureties discharged.

79. This order shall be communicated to the appellant, Mukesh Gupta, who is in jail through the Jail Superintendent, Pilibhit by the Registrar (Compliance).

80. Let a copy of this order be forwarded to the Trial Court concerned along with the lower court record for information and necessary compliance.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

February 11, 2026

Anoop