A PREM SINGH

v.

STATE OF NCT OF DELHI

(Criminal Appeal No. 01 of 2023)

B JANUARY 02, 2023

[DINESH MAHESHWARI AND SUDHANSHU DHULIA, JJ.]

Penal Code, 1860 – ss.302, 201 and s.84 – Murder – Disappearance of evidence – Circumstantial evidence – Appreciation of – Plea of mental incapacity – Tenability – C *Allegations against appellant that, he took his two sons, aged about 9 years and 6 years, near a canal, strangulated them to death, and threw their dead bodies into the canal – Trial court held appellant guilty u/ss.302 and 201 IPC and sentenced him to life imprisonment – High Court upheld the conviction and sentence – Held: There is* D *no infirmity in the findings concurrently recorded by the Trial Court and the High Court that the prosecution case was amply established by cogent and convincing chain of circumstances, pointing only to the guilt of the appellant, who caused the death of victim children, his sons, by strangulation and also caused the evidence of offence* E *to disappear by throwing the dead bodies into the canal – In the given set of circumstances, when the deceased children were last seen in the company of the appellant, who was none else but their father and when their death was caused by manual strangulation, the burden, perforce, was heavy upon the appellant to clarify the facts leading to the demise of his sons, which would be presumed to* F *be specially within his knowledge – Principles of s.106 of Evidence Act operated heavily against the appellant – But there was no explanation on his part and immediately after the incident, he attempted to create a false narrative of accidental drowning of the children – The submission that strained relationship of appellant* G *with his wife may not provide sufficient motive for killing the children cannot be accepted for the reason that the motive projected in the present case had been that the appellant doubted the paternity of the deceased children and suspected that they were not his sons – Submission that the appellant be extended the benefit of alleged want of mental capacity also baseless – The evidence on record,* H *taken as a whole, at the most shows that the appellant was addicted*

to alcohol and was admitted to the rehabilitation centre for de-addiction – However, appellant was neither suffering from any medically determined mental illness nor could be said to be a person under a legal disability of unsound mind – Hence, neither s.84 IPC applies to the present case nor s.329 CrPC would come to the rescue of the appellant – Therefore, no case for interference made out – Evidence Act, 1872 – s.106 – Code of Criminal Procedure, 1973 – s.329.

Penal Code, 1860 – s.84 – Charges of murder – Burden of proof in the context of plea of unsoundness of mind – Held: Burden of proving the existence of circumstances so as to bring the case within the purview of s.84 IPC lies on the accused in terms of s.105 of the Evidence Act – Where the accused is charged of murder, the burden to prove that as a result of unsoundness of mind, the accused was incapable of knowing the consequences of his acts is on the defence, as duly exemplified by illustration (a) to s.105 of the Evidence Act – Mandate of law is that the Court shall presume absence of the circumstances so as to take the case within any of the General Exceptions in the IPC – Evidence Act, 1872 – s.105.

Criminal Trial – Motive – Motive, when proved, supplies additional link in the chain of circumstantial evidence – But, absence thereof cannot, by itself, be a ground to reject the prosecution case; although absence of motive in a case based on circumstantial evidence is a factor that weighs in favour of the accused – When the evidence on record unambiguously proves the guilt of the accused-appellant, the factor relating to motive cannot displace or weaken the conclusions naturally flowing from the evidence.

Constitution of India – Art.136 – Appeal by special leave – Distinction in the scope of a regular appeal and an appeal by special leave.

Dismissing the appeal, the Court

HELD:

Chain of circumstances, last seen theory, s.106 Indian Evidence Act

1.1. When the facts established by the evidence on record and the surrounding factors are put together, the chain of

circumstances had unfailingly been that the deceased children were lastly seen alive in the company of the appellant; they died because of manual strangulation and obviously, their death was homicidal in nature; their dead bodies were recovered from the canal; and the appellant attempted to project that they had accidentally fallen into the canal. In the given set of circumstances, when the deceased children were in the company of the appellant, who was none else but their father and when their death was caused by manual strangulation, the burden, perforce, was heavy upon the appellant to clarify the facts leading to the demise of his sons, which would be presumed to be specially within his knowledge. Thus, the principles of Section 106 of the Evidence Act operate heavily against the appellant. [Para 16.4][850-G-H; 851-A-B]

1.2. It is, of course, the duty of prosecution to lead the primary evidence of proving its case beyond reasonable doubt but, when necessary evidence had indeed been led, the corresponding burden was heavy on the appellant in terms of Section 106 of the Evidence Act to explain as to what had happened at the time of incident and as to how the death of the deceased occurred. There had not been any explanation on the part of the appellant and immediately after the incident, he attempted to create a false narrative of accidental drowning of the children. There had not been any specific response from the appellant in his statement under Section 313 CrPC either. [Para 16.4.1.][851-C-D]

<u>Question of Motive</u>

2.1. Motive, when proved, supplies additional link in the chain of circumstantial evidence but, absence thereof cannot, by itself, be a ground to reject the prosecution case; although absence of motive in a case based on circumstantial evidence is a factor that weighs in favour of the accused. [Para 17.1][851-F-G]

2.2. The question of motive in the present case cannot be examined only with reference to the testimony of the wife of the appellant who has, even while admitting that she left the children in the company of the appellant and thereafter heard only about their demise, chosen not to support the accusations against the

appellant. However, her testimony is contradicted by at least three prosecution witnesses with two of them, PW7 and PW-8 being her uncles, who maintained that there were strained relations of the appellant and his wife and that the appellant doubted the character of his wife as also the paternity of the children. Even PW-5, brother of the appellant, though attempted to depose against the prosecution case but indeed testified to the fact that there had been strains in the relationship of the appellant and his wife. The submission that strained relationship of appellant with his wife may not provide sufficient motive for killing the children cannot be accepted for the reason that the motive projected in the present case had been that the appellant doubted the paternity of the deceased children and suspected that they were not his sons. [Para 17.2][851-G-H; 852-A-C]

2.3. When the evidence on record unambiguously proves the guilt of the accused-appellant, the factor relating to motive cannot displace or weaken the conclusions naturally flowing from the evidence. Moreover, the present case cannot be said to be of want of motive altogether. Differently put, when all the facts and circumstances are taken together, the present one is not a case where there had been any missing link in the chain of circumstances, leading only to the conclusion of the guilt of the appellant. [Para 17.3][852-D]

Plea of Mental Incapacity

3.1. The prosecution has proved beyond reasonable doubt that the accused has committed the offences of murdering the children and causing disappearance of evidence. The other surrounding factors also show that prosecution has proved the requisite *mens rea* with reference to the manner of commission of crimes and projecting false narratives by the appellant. In the given set of facts and circumstances, on the submission as made as regards unsoundness of mind, the question in the present case is as to whether the accused-appellant has been able to establish that he was insane at the time of committing the offence or anything has been projected on record for which even a reasonable doubt could be entertained as regards *mens rea*? The answer to this question could only be in the negative. [Para 22][856-D-E]

3.2. The evidence on record, taken as a whole, at the most shows that the appellant was addicted to alcohol and was admitted to the rehabilitation centre for de-addiction. However, there is absolutely nothing on record to show that the appellant was medically treated as a person of unsound mind or was legally required to be taken as a person of unsound mind. Contrary to the suggestions made on behalf of the appellant, the testimony of PW-3, manager of rehabilitation centre, had been clear and specific that during his stay in the centre, no mental illness was observed in the appellant nor was he treated for any mental illness. PW-3 stated in categorical terms that the behaviour of the appellant *'was normal during his said stay and he was never given any medicine for mental illness because neither any mental illness was observed in him nor his family members gave us any previous history of his suffering from any mental illness.'* In his cross-examination, this witness further removed any doubt in regard to the mental status of the appellant while maintaining that the appellant *'was mentally fit and sound during his stay at our centre and he was admitted only for de-addiction of his habit of consuming liquor.'* Hence, the appellant's had only been a case of addiction to alcohol. The manager, PW-3, of course, suggested the opinion that the appellant ought to have undergone the course for a period of 7-9 months and that the family members got him discharged against advice but, this statement cannot be read to mean that the appellant was to be treated as a person of unsound mind. In fact, the appellant remained admitted to the rehabilitation centre from 20.11.2008 to 29.04.2009, i.e., for a period of over 5 months and, as noticed above, he was never found suffering from any mental illness so as to be regarded as a person of unsound mind. [Para 23][856-F-H; 857-A-C]

3.3. Also the plea of unsoundness of mind and, therefore, the benefit of Section 84 IPC, was never taken in the trial nor any evidence was led in this regard. Significantly, not even a remote suggestion was made to any witness examined for the prosecution about the alleged mental incapacity of the appellant. In his examination under Section 313 CrPC, the response of the appellant to the questions relating to his admission to the rehabilitation centre and the related facts had been that those aspects were *'a matter of record'*. In the given set of facts and

circumstances, one is unable to find anything on record for which the benefit of Section 84 IPC could even be remotely extended to the appellant. [Para 24][857-D-E]

3.4. There was no fault on the part of the Trial Court or the investigating agency. Also, contrary to even a trace of want of mental capacity of the appellant at the time of commission of the crimes in question, the manner of commission, with strangulation of the children one by one; throwing of their dead bodies into the canal; appellant himself swimming in the canal and coming out; and immediately thereafter, stating before several persons that the children had accidentally slipped into the canal so as to project it as a case of accidental drowning, if at all, show an alert and calculative mind, which had worked with specific intent to cause the death of the children and to cause disappearance of evidence by throwing dead bodies into the canal and thereafter, to mislead by giving a false narrative. By no logic and by no measure of assessment, the appellant, who is found to have carried all the aforesaid misdeeds, could be said to be a person of unsound mind. [Para 26][859-D-E]

3.5. The appellant was neither suffering from any medically determined mental illness nor could be said to be a person under a legal disability of unsound mind. Hence, neither Section 84 IPC applies to the present case nor Section 329 CrPC would come to the rescue of the appellant. [Para 27][859-F]

3.6. The suggestions about treatment of the appellant for his abnormal behaviour in jail also does not take his case any further. There is nothing on record to find that the appellant was a person of unsound mind at the time of commission of crime or was a person of unsound mind when tried in this case. Post-conviction behaviour is hardly of any relevance so far as present appeal is concerned. In fact, his post-conviction abnormalities, as dealt with in year 2013 i.e., nearly two years after the impugned judgment of the Trial Court, cannot even remotely be correlated with the relevant questions arising for the purpose of present appeal. Even in that regard, the report of the Medical Officer (I/C) Central Jail No. 5, Tihar New Delhi dated 22.07.2013 states that the appellant was admitted to psychiatry ward from 07.01.2013 to 04.03.2013 for complaints of abnormal behaviour but, he

improved following treatment and at time of issuance of certificate, his general condition was satisfactory; and his mental status examination did not reveal any gross psychopathology. [Para 28][859-G-H; 860-A-B]

3.7. Hence, viewed from any angle, the contention urged on behalf of appellant, as to be given the benefit of the provisions meant for a person of unsound mind, cannot be accepted. The said provisions do not enure to the benefit of the appellant from any standpoint. [Para 29][860-C]

3.8. In the given set of facts and circumstances, even when the appellant was shown to be a person taken to excessive consumption of alcohol, there is nothing on record to show if he did the offending acts in a state of intoxication so as to give rise to a doubt about intention with reference to the principles underlying Section 86 IPC. There is no need to elaborate on this aspect for the same having not been projected in evidence at all. In other words, the present one is not a case where intent could be ruled out so as to reduce the offence of murder to that of culpable homicide not amounting to murder. The suggestions about altering the conviction to Section 304 IPC are also required to be rejected. [Para 30][860-C-E]

Conclusion

4. There is no infirmity in the findings concurrently recorded by the Trial Court and the High Court that the prosecution case is amply established by cogent and convincing chain of circumstances, pointing only to the guilt of the appellant, who caused the death of victim children, his sons, by strangulation and also caused the evidence of offence to disappear by throwing the dead bodies into the canal. The submissions evolved for the purpose of the present appeal that the appellant be extended the benefit of alleged want of mental capacity also remain baseless and could only be rejected. Therefore, no case for interference is made out. [Para 31][860-F-G]

Pappu v. The State of Uttar Pradesh **2022 SCC OnLine SC 176;** *Sharad Birdhichand Sarda v. State of Maharashtra* **(1984) 4 SCC 116 : [1985] 1 SCR 88;** *Hanumant v. State of Madhya Pradesh*, **AIR 1952 SC 343 : [1952] SCR 1091;** *Sabitri Samantaray v. State of*

Odisha, **2022 SCC OnLine SC 673;** *Trimukh Maroti Kirkan v. State of Maharashtra* **(2006) 10 SCC 681 : [2006] 7 Suppl. SCR 156;** *Sudru v. State of Chhattisgarh* **(2019) 8 SCC 333;** *Anwar Ali and Anr. v. State of Himachal Pradesh*, **(2020) 10 SCC 166 : [2020] 9 SCR 878** and *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, **AIR 1964 SC 1563 : [1964] 7 SCR 361 – relied on.**

State of Gujarat v. Manjuben, **2019 SCC OnLine Guj 6937 – held inapplicable.**

Ajay Ram Pandit v. State of Maharashtra, **2022 SCC OnLine Bom 3920 – distinguished.**

A.R. Antulay v. R.S. Nayak, **(1988) 2 SCC 602: [1988] 1 Suppl. SCR 1;** *Rahul v. State of Delhi, Ministry of Home Affairs and Anr.*, **2022 SCC OnLine SC 1532;** *Bapu alias Gujraj Singh v. State of Rajasthan*, **(2007) 8 SCC 66 : [2007] 7 SCR 917** and *Shrikant Anandrao Bhosale v. State of Maharashtra*, **(2002) 7 SCC 748 : [2002] 2 Suppl. SCR 612 – referred to.**

Eric Dolby v. State of Delaware **[Decision dated 02.03.2012** of the Supreme Court of the State of Delaware] – referred to.

King-Emperor v. Tincouri Dhopi [Decision of Calcutta High Court], **1922 SCC OnLine Cal 90 – referred to.**

Case Law Reference

[1988] 1 Suppl. SCR 1	**referred to**	**Para 10.3.2**
[2007] 7 SCR 917	**referred to**	**Para 11.4**
[2002] 2 Suppl. SCR 612	**referred to**	**Para 11.5**
[1964] 7 SCR 361	**relied on**	**Para 11.5**
[1985] 1 SCR 88	**relied on**	**Para 13**
[1952] SCR 1091	**relied on**	**Para 13**
[2006] 7 Suppl. SCR 156	**relied on**	**Para 14.2**

(2019) 8 SCC 333	**relied on**	**Para 14.3**
[2020] 9 SCR 878	**relied on**	**Para 15**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.01 of 2023.

From the Judgment and Order dated 29.02.2016 of the High Court of Delhi at New Delhi in Criminal Appeal No.879 of 2013.

Shikil Suri, Mrs. Madhu Suri, Ms. Jyoti Suri, Ms. Mahima Aggarwal, Ms. Komal Gupta, Ms. Nidhi, Advs. for the Appellant.

Shubhranshu Padhi, Vishal Bansal, Ms. Rajeshwari Shankar, Niroop Sukrithu, Mohd. Ovias, Advs. for the Respondent.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

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Preliminary and brief outline

***Pagination in the Table is as per the original judgement.**

Leave granted. A

2. This appeal is directed against the judgment and order dated 29.02.2016, as passed by the High Court of Delhi at New Delhi in Criminal Appeal No. 879 of 2013, whereby the High Court has dismissed the appeal against the judgment of conviction and order of sentence, respectively dated 03.09.2011 and 08.09.2011, as passed by the Court of B Additional Sessions Judge-IV, Rohini (Outer), Delhi in Sessions Case No. 238 of 2009, whereby the appellant was held guilty of offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860[1] and was awarded varying punishments, including that of imprisonment for life for the offence under Section 302 IPC.

C

3. Before dealing with the matter in necessary details, we may draw a brief outline to indicate the contours of the forthcoming discussion.

3.1. The allegations against the appellant had been that on 03.05.2009, he took his two sons, aged about 9 years and 6 years, to Haiderpur Canal, strangulated them, and threw the dead bodies into the canal; and thereafter, attempted to project as if it were a case of D accidental drowning.It was also alleged that the appellant was a drunkard, who doubted the chastity of his wife and suspected that the children were not his sons.

3.2. In trial, two of the prosecution witnesses, PW-5 Bishan Singh (brother of the appellant) and PW-9 Sunita Yadav (wife of the appellant) E did not support the prosecution case as regards conduct and behaviour of the appellant. However, the Trial Court held that all the essential and material facts were duly established in the evidence adduced by the prosecution, including that the deceased children were last seen in the company of the appellant, who took them to canal and later on informed F the staff at the Haiderpur Water Plant and at the Petrol Pump as also to the police that they accidentally fell into the canal; that the cause of death of both the children had been asphyxia as a result of manual strangulation; and that the appellant was a drunkard who doubted the chastity of his wife and thought that he was not the father of the deceased children. The Trial Court, therefore, convicted the appellant of the G offences under Sections 302 and 201 IPC and awarded the punishments accordingly.

3.3. In appeal, it was essentially contended on behalf of the appellant that there were missing links in the chain of events, particularly

[1]'IPC', for short. H

A when the allegations of the appellant doubting the chastity of his wife were not proved and hence, there was no reason for which the appellant would have killed his own sons. *Per contra,* it was submitted on behalf of the respondent-State that the children were lastly seen in the company of the appellant and it was clearly established that they died due to manual strangulation and not on account of drowning, as falsely suggested by the appellant, who otherwise failed to discharge the burden,in terms of Section 106 of Indian Evidence Act, 1872[2], of explaining the circumstances leading to the death of the children by strangulation. The High Court again minutely analysed the evidence on record and, while rejecting the contentions urged on behalf of the appellant, dismissed the appeal and affirmed the findings and conclusions of the Trial Court.

3.4. In challenge to the concurrent findings leading to conviction and sentencing of the appellant, it has essentially been contended on his behalf that when the story of strained relationship between the appellant and his wife has not been supported by the material witnesses including the wife of the appellant, there was no reason or motive for the appellant to kill his own sons; and the alleged want of explanation on the part of the accused-appellant cannot be a ground for conviction in the present case. It has also been contended that there had been a fundamental defect in the trial when the Trial Court omitted to examine the capacity of the appellant in terms of Section 329 of the Code of Criminal Procedure, 1973[3] while ignoring the material evidence on record to the effect that the appellant was not a person of sound mental disposition, for he was admitted toa rehabilitation centre for de-addiction and was discharged against the advice of the centre. The facts regarding treatment of the appellant for mental illness post-conviction have also been referred to in this regard. On the other hand, it has been contended on behalf of the respondent-State that when the deceased were lastly seen in the company of the appellant, the burden was heavy upon him to explain the cause of their unnatural death, which he had failed to discharge; rather he gave false information about accidental drowning of the children. It has also been submitted that the plea of unsoundness of mind, as taken before this Court, remains untenable for the same having not been raised in trialor even in appeal before the High Court. It is submitted that even if the appellant had been admitted to and treated in the psychiatry ward after conviction, it would not take his case of such unsoundness of mind

[2] Hereinafter also referred to as 'the Evidence Act'.

[3] 'CrPC', for short.

at the time of commission of the crime that he could be absolved or exonerated. A

Relevant factual and background aspects

4. With reference to the outline as above and looking to the questions arising for determination in this appeal, the relevant factual and background aspects could be noticed, in brief, as follows: B

4.1. The prosecution case, based on circumstantial evidence, had been that the appellant took his two sons Jitesh and Sunny, aged about 9 years and 6 years respectively, to Haiderpur Canal at Haiderpur Water Plant, Paschim Vihar, Delhi under the pretext of having fun and after reaching the said place and getting opportunity, he strangulated them one by one and threw the dead bodies into the canal. The prosecution case further had been that the appellant attempted to project as if the children accidentally fell into the canal and in that effort, he jumped into the canal and, after swimming for some distance, came out and then, went to the nearby office of Water Treatment Plant to inform the staff present there about his sons having accidentally fallen into the canal; and thereafter, he also went to a nearby Petrol Pump and narrated the same story to one of the employees and made a call at 100 number to the police. According to the prosecution, after reaching of the police,the appellant narrated the same version. C D E

4.2. However, after recovery of the dead bodies and their post-mortem examination, it was revealed that the children did not die because of drowning but the cause of death had been asphyxia as a result of manual strangulation. In the given circumstances, suspicion turned towards the appellant, for he was the person lastly in the company of the deceased children. It was alleged that during interrogation, the appellant confessed to the crime while stating that he doubted the chastity of his wife and suspected that the children were not his sons. F

4.3. After conducting investigation in the First Information Report[4] registered in this matter bearing No. 253 of 2009, Police Station Prashant Vihar, charge-sheet was filed against the appellant for the offences punishable under Sections 302 and 201 IPC. After the case was committed to the Court of Sessions and the necessary charges were framed, the appellant pleaded not guilty and claimed trial. G

[4]'FIR', for short.

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A ***Prosecution Evidence***

5. In trial, the prosecution examined as many as 18 witnesses. The peculiar feature of the case had been that while two of the witnesses, PW-7 Mahender Kumar Yadav, uncle of the wife of the appellant,and PW-8 Rajender Yadav, another uncle of the wife of the appellant,attempted
B to suggest that the appellant was a drunkard who used to give beating to his wife and suspected her character but, PW-5 Bishan Singh, brother of appellant,as also PW-9 Sunita Yadav, wife of the appellant, did not support this version. On the contrary, wife of the appellant specifically maintained that she had always been having good and cordial relations with her husband. Another set of evidence in this case had been in relation
C to the addiction of the appellant to alcohol and his admission to, and discharge from, rehabilitation centre. In this regard, the testimonies of PW-2 Puran Singh, cousin of the appellant, and of PW-3 Jagbir, manager of rehabilitation centreassume relevance in view of emphasis laid in this appeal on mental disposition of the appellant. Yet another set of evidence
D had been of three witnesses, PW-1 Naresh Kaushik, delivery boy at the Petrol Pump, PW-4 Mahesh Kumar Sharma and PW-6 Komal Ram, the personnel in-charge at the Water Treatment Plant,who testified to the facts about the appellant visiting them immediately after the incident while suggesting that his sons had accidentally fallen into the canal. PW-
E 14 Dr. V.K. Jha had been the medical officer who conducted post-mortem over the dead bodies and maintained his opinion that the cause of death in relation to each of the children was asphyxia as a result of manual strangulation.The other witnesses had been the personnel who conducted the investigation or carried out the tasks related thereto.

F 6. Though elaboration on the entire prosecution evidence is not necessary for the purpose of thepresent appeal but, having regard to the contentions urged, we may take note of the relevant depositions concerning material factors namely, the appellant's addiction to alcohol and his admission to, and discharge from, the rehabilitation centre; the appellant's conduct towards his wife; the appellant's version immediately
G after the event leading to the demise of his two sons; and the medical opinion after post-mortem of the dead bodies of the victim children.

6.1. As regards addiction of the appellant and the matters related with his admission to, and discharge from, the rehabilitation centre, the relevant part of the testimonies of PW-2 Puran Singh, cousin of the

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appellant and PW-3 Jagbir, the manager of rehabilitation centrewould read as under[5]: -

"PW 2 Sh. Puran Singh Yadav S/o Sh. Bharat Singh Yadav, aged about 63 years, R/o DU 72 Vishakha Enclave, Pitampura Delhi.

On S.A.

…..About 15/20 days prior to the present incident I came to know that Prem Sing is admitted at Chetna Deaddiction Centre in Auchandi Village due to his habit of consume liquor. I visited the said deaddiction centre and found him admitted over there. I tried to contact the doctor over there but the officials of said centre informed me that the doctor will come on Wednesday but on wednesday the said doctor did not arrive and they informed me on telephonethat doctor will come on Friday. When I made a telephonic call at the said deaddiction centre on friday then I came to know that my uncle had got accused Prem Singh discharged from the said centre. I raised an objection to the officials of said deaddiction centre as to why they had discharged Prem Singh as his condition was not normal.

After 2 or 3 days of his discharge the present incident took place as far as I remember it was Sunday night. Had Prem Singh not been discharged from the said deaddiction centre the present incident could have been avoided.

At this stage Ld. APP seeks permission to put some leading question to the witness. Heard. Allowed.

Q I put it to you that Prem Singh used to quarrel with his wife Sunita and used to regularly beat and abuse his wife Sunita and his both the deceased sons. Prem Singh is a man of violent nature?

A. I am unaware about the said facts as I was not a regular visiter in the house of Prem Singh. I never stated so in my statement recorded by the police and the IO had mentioned the said facts in my statement on his own.

xxxxx by Ms. Sadhna Bhatia, Amicus Curie Ld. Counsel for the accused.

[5] Most of the extractions herein are *verbatim* from the copies placed on the record of this appeal.

A IO never recorded my statement. IO never made any inquiry from me regarding this case. What ever I have deposed before the court today is true. I had never seen accused beating his wife or abusing his children as I reside separatly from their family and do not interfere in their house. It is wrong to suggest that I am deposing falsely."

B *** *** ***

"PW3 Statement of Sh. Jagbir S/o Sh. Sukhbir Singh, aged 40 years, R/o H. No. 205, village – Auchandi, Delhi – 39.

On S.A.

C I am working as manager of Chetna Foundation (Regd.) Drugh De-addiction and Rehabilitation Centre, Village Auchandi, Delhi-39 for last five years.

In our said centre accused Prem Singh present in the court today (correctly identified) was admitted on 20.11.08 for de-addiction of his habit of consuming ahlcohol. He was got admitted by his father Girdhari Singh and his wife Sunita. He remained admitted at our said centre till 29.04.09. During the said period his counseling was done and after that he used to behave like an ordinary prudent man. During his said stay of about of 5 months at our centre he never went to his home. His wife Sunita, Sister Baladevi, father Girdhari Lal and Cousin Puran Singh came at our centre to meet him. He used to talk telephonically with his wife Sunita, father Girdhari and other persons from the telephone no. installed at our centre i.e, 27742360 and 27741540. The behaviour of the Prem Singh was normal during his said stay and he was never given any medicine for mental illness because neither any mental illness was observed in him nor his family members gave us any previous history of his suffering from any mental illness. He was only having addiction to liquor as told to us by his family members.

G ….. ……. …….

On 29.04.2009 Girdhari Singh along with one other person got Prem Singh discharge from our centre against our advice as I had advised him to complete the course of 7-9 months. IO recorded my statement. Documents which I had handed over to the IO i.e.,

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certificate is Ex. PW3/B and the photocopy of his complete file of 8 pages is collectively Ex. PW 3/C all the documents signed by me at point A. Original documents produced by the witness seen and returned.

xxxxx by Ms. Sadhna Bhatia, Amicus Curie,Ld. Counsel for the accused.

Accused was mentally fit and sound during his stay at our centre and he was admitted only for de-addiction of his habit of consuming liquor."

6.2. As noticed, PW-7 Mahender Kumar Yadav and PW-8 Rajender Yadav, both uncles of the wife of the appellant, asserted that the appellant was not having good relations with his wife, was taken to the habit of consuming liquor excessively, and was suspecting the character of his wife. However, PW-5 Bishan Singh, brother of the appellant and PW-9 Sunita Yadav, wife of the appellant did not support the version of PW-7 and PW-8. We may take note of the relevant parts of the statements of PW-7, PW-8, PW-5 and PW-9, in that order, as under: -

"PW7- Statement of Mahender Kumar Yadav, Aged-52 years S/O Late Sh. Ram Kishan Yadav R/O WZ-350 Village Shakurpur Delhi.

On S.A.

My niece Sunita Yadav had been married to accused Prem Singh in the year 1996 and after marriage she starts residing at H.NO-225 Haider Pur Delhi. Accused Prem Singh present in the court today used to comment on the chastity of my niece Sunita Yadav. Accused used to taking liquor and giving beating to Sunita. Accused used to blame on my niece that she was not having good character. Two male issues were borned after the wed-lock. She was also told by his father in an effort to rectify accused Prem Singh to join Nasha Mukti Kendr, Auchandi Gav. On advise of her father accused was admitted to the above centre for his treatment by my niece but on 29.04.2004 accused's father has relieved his son from the Nasha Mukti Kendr Centre.

Regarding both the issue accused Prem Singh used to comment that they were not belongs to me and used to quarreled with my niece and stated that they belongs to someone else. Once

A accused Prem Singh attempted to kill both the child by giving them electric shock but with the pursuation of my niece and showing her humbleness she was able to save both the child. Thereafter, Sunita came to our house and remained in our house for about 5-6 months and thereafter Prem Singh has taken my daughter to his house. Accused Prem Singh after coming from the Nasha Mukti Kendr remains quiet for 2-3 days but later on he continued his same behavior i.e, blaming on my niece and talk vulger with her. He also stated that your calling some persons in your house and indulging in bad activities (*galat kaam*) like sexual assault. He also used to quarrel with my daughter.

C On 03.05.2009 Sunita came to my house and stated that accused Prem Singh quarreling with her. I went to his house and tried to consolidate their matter but could not succeed, ultimately I returned to my house. On the same day at about 11:00 am I received a phone call by the police that both the children of my niece Sunita were died by drowning in the canal near Haider Pur Water treatment plant. I suspect that both the children have not been drowned as their own but they were killed by their father accused Prem Singh……. At the time of recovery of the dead body accused Prem Singh was claiming that both the children have been drowned in the canal on their own but later on after his arrest he admitted that he has committed murder of his both the children. Police recorded the disclosure statement of accused Prem Singh in my presence same is EXPW-7/D signed by me at pt A.

xxxxxx advocate by Ms. Sadhna Bhatia (Amicus Curie) for the accused.

F We have not made any complaint regarding the above said behavior to the police. My statement was recorded at the PP Prashant Vihar. We have not called Panchayat in regard to the quarrel between my niece and Prem Singh. Vol. We had gone to the house of accused for number of times for reconsider the matter but accused could not give any heed. My niece Sunita told me about the attempt of accused to kill his both the children by way of electric shock but I had not seen personally. We have not made any complaint for the above incident to the police. I had not seen personally any beating by accused to his wife. The house of accused is about 5 km from my house. On 03.05.2009 I went to

canal at about 07:00 pm. When I saw accused near the canal and also seen his children's body. I did not report the matter to the police regarding conduct of accused qua my niece and the children. I had not seen the occurance. It is incorrect to suggest that I am deposing falsely being the maternal uncle of Sunita or that accused used to love Sunita and the children or that he did not commit the alleged offence or that being relative of Sunita I had deposed falsely in the court."

*** *** ***

"PW8- Statement of Rajender Yadav, aged 43 years S/O Sh. Jawahar Singh R/O WZ-342 Village Shakur Pur Delhi.

On SA

I am running a shop in the name of M/s. Astha Enterprises at Sector-7 Rohini Delhi. Sunita W/O accused Prem Singh is my niece who has been married with accused for about 12-13 years before. Initially, accused Prem Singh was working as a transporter but later on he left this work and become unemployed and he used to take liquor often. My niece used to tell whenever she visited our house that accused used to abusing her and also demanding money and also gave beating her. We sometime help her in cash. 2-3 years after the marriage Sunita's both son Jitesh and Sunny live with us in our house for about 2 years. Because of the habit of acute drinking of accused he was once sent to Nasha Mukti Kendr by his wife Sunita but later on the family members of accused released him against the wishes of Sunita. On the day of release accused Prem Singh has given severe beatings to his wife Sunita and both his children and in turn Sunita came to our house leaving children at the house of accused at Haider Pur. We received a phone call for PS Prashant Vihar on 03.05.2009 that they have informed by Prem Singh that his 2 children has drown in the Haider Pur Canal while they were playing near the canal in front of him. We went to the PS, I and Mahender Singh son of my uncle late Sh. Ram Kishan and in the PS we saw that Prem Singh was apprehended by the police and we were having strong suspicion that Prem Singh has drown his both the children as he was suspicion over the character of Sunita. During drunken condition accused also gave beatings to his both the sons and his

behavior towards his children was abnormal as he withdraw both the children Jitesh and Sunny from the school……

xxxxxx By Ms. Sadhna Bhatia (Amicus Curie) for the accused Prem Singh.

My statement was recorded by the police in PS on 03.05.2009 in the evening. It is correct that my statement was recorded on 13.06.2009 after he was pointed out the date of statement recorded U/S 161 CRPc. I had stated to the police in my statement that Jitesh and Sunny were lived in our house before their death for about 2 years. Confronted from statement EX PW-8/DA where it is not so recorded. I have stated to the police that after returning from the Naksh Mukti Kendr accused has given beatings to his both sons. Confronted from statement EX PW-8/DA where it is not so recorded. We have not made any complaint to the police regarding beating of my niece and her children. It is wrong to suggest that accused was not affectionate to his children and not suspicion on the character of my niece. It is correct that my niece only informed about beating whenever she visited our house. It is correct that my niece and her sons were not beaten in my presence. It is wrong to suggest that I am deposing falsely."

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"PW5 -Statement of Bishan Singh S/O Sh. Girdhari Singh (recalled for further examination since deferred dt. 06.09.2010)

ON SA

The name of son of my brother Prem Singh is Jitesh and Sunny. At the time of incident my brother Prem Singh was unemployed. His habits were normal but he used to take liquor. Previously he was having transport business and having 2 trucks but 4-5 year before he has sold his trucks and thereafter he was running poultary mills and he indulged in the business only for one year and thereafter he become unemployed. There was tension between my brother and his wife and during those days he was taking drinks open. Some time we listen hitted conversation between my brother and his wife. I do not know the real cause of their strange relation. He was having normal relations with his children also. My brother Prem Singh was once admitted in Nasha Mukti Kendr

at Auchandi and he remained there for about one year. He was released by my father Sh. Girdhari Singh from the Nasha Mukti Kendr on the assurance of Prem Singh to amend his habits and leave the habit of intoxication and also his condition was deteriorating….. I do not know what had happened with the children of Prem Singh. I listen from police person that my both nephew were drowned in the Yamuna Canal. I was also went to hospital and after postmortem at BJRM Hospital. The dead body of my nephew Jitesh and Sunny was handed over to the relatives vide receipt EX PW-2/B signed by me at pt C. Police had recorded my statement at PP Prashant Vihar but I do not know the date when my statement was recorded.

At this stage, Ld. APP submits that he wants to cross examine the witness as he is resiling from his previous statement.

Heard. Allowed

Xxxxxx by Ld. APP for the State.

I do not remember that my statement EX PW-5/A was recorded on 13.06.2009 or not. It is wrong to suggest that I have stated in my statement that my brother Prem Singh during quarrel and in the rage he used to abusing and beating his wife. Confronted from "A" to "A1" of my statement EX PW-5/A where it is so recorded. I have not stated to the police that my brother was suspicious over the character of his wifeand the suspicion was because of the reason that whenever his wife come from the house of Mahender Singh, his maternal uncle situated at Shakur Pur Village, she was brought by some boys of tenant of Mahender Singh. He was also not having affection like a father towards his both the sons and during quarrel he used to pin pointing that the sons were not belongs to him. Prem Singh was not controlled neither by me not his father. Confronted from "B" to "B1" of my statement EX PW-5/A where it is so recorded. It is correct that my brother was released from the Nasha Mukti Kendr on 29.04.2009. it is correct that on receiving the information from Rohini Court police staff on 03.05.2009 they informed that they got an information for my brother Prem Singh that when both his son Jitender and Sunny were present at Haider pur Canal and they were running and playing in front of him they were drowned

A in the canal and flown *(Beh Gaye)* in the canal. I have not stated to the police that oftenly my brother cursing the character of his wife and abusing and beating her and was having haterisim against his both the sons. Confronted from "C" to "C1" of my statement EX PW-5/A where it is so recorded. I have not stated to the police that the cause of suspicion over character of wife and for taking revenge from his wife he has committed murder of his both son Jitesh and Sunny and thereafter informed to the police that they were drowned in the canal when they were playing. Confronted from "D" to "D1" of my statement EX PW-5/A where it is so recorded. It is wrong to suggest that accused is my brother as such I am not giving the fair statement which I have got recorded during the police investigation. It is wrong to suggest that due to passage time my anger cool down or that I am deposing in favour of accused Prem Singh. It is wrong to suggest that I strategically concealed the fact of haterism of my brother towards his wife because of her character and concequently his ill behavior towards his sons and ultimately causes the death of his sons.

xxxxxx By Ms. Sadhna Bhatia (Amicus Curie) for the accused Prem Singh.

No complaint was lodged to the police when the quarrel erupts between accused and his wife. Accused was having affection and love towards his both the sons."

*** *** ***

"PW9- Statement of Sunita Yadav, aged-35 years W/O Sh Prem Singh R/O H. NO-225 Village Haider Pur Delhi.

On SA

I have been married with accused Prem Singh in the year 1996. After marriage I have been blessed with 2 sons. I used to run my house with the money earned by husband as well as some money given by my father from the rent premises. I am 12th passed. Before marriage, I used to reside with my maternal uncle Mahender Kumar Yadav since the age of three years. My real parents were living in UP in a village Lohara Sarai, Distt. Bagpat. The residence of my maternal uncle is at H.N -WZ/350, Shakurpur village, Delhi. My husband used to live me happily after marriage. I have no

complaint with my husband. On the day of incident, I went to the house of my maternal uncle as my Nani was ill leaving my both the sons with their father/accused. There were no other reason for leaving my matrimonial house. I do not know what happened with the children. Later on, I received a phone call from Prashant Vihar police station and stated that my both the sons have expired. I have not given statement to the police. Police has not recorded my statement nor police inquired from me. I do not want to say anything else in regard to this case.

At this stage Ld. APP wants to cross examine the witness as she is supressing the truth and is resiling from her earlier statements recorded by the police.

Heard. Allowed.

xxxx by LD. APP for the State

I have not signed my statement on 4.5.2006. It is wrong to suggest that police has recorded my statement on 4.5.2006 and the same is marked PW9/A signed by me at point A. It is correct that as the condition of my husband was not well as such he was admitted 4/5 months before the incident to Nasha Mukti Kender. Vol. Stated that my husband was not taking liquor at all and the doctors of Nasha Mukti Kender stated that they will treated my husband from a good doctor. I have not stated to the police that after my husband was released from Nasha Mukti Kender by my father in law, we live peacefully for 2/3 days thereafter but on 3.5.2009 at about 11.00 a.m my husband has given beatings to me as a result of which I had gone to the house of my maternal uncle leaving my both the sons with him and later on I came to know that my both the sons had drown in Haiderpur canal. (confronted with portion A to A-1 of my statement mark PW9/A where it is so recorded). It is wrong to suggest that police have also recorded my statement and the same is mark PW9/B and I have stated in the statement that after marriage I came to know that accused Prem Singh was in a habit of taking liquor. (Confronted from portion A to A-1 of statement mark PW9/B where it is so recorded). It is correct that initially my husband was in the business of transport and he was having two trucks but later on, both the trucks were sold out and he become unemployed. It is wrong to suggest that

A he was taking liquor during his unemployment. (confronted from portion B to B-1 of mark PW9/B wherein it is so recorded). It is wrong to suggest that accused used to abusing and beating me (Confronted with portion C to C of mark PW9/B wherein it is so recorded). It is wrong to suggest that two and half years before the incident, because of beating and ill behaviour of accused Prem
B Singh, I alongwith my both sons went to the house of my maternal uncle and living in their house or that accused Prem Singh used to put filthy and dignatory allegations on me and stated to me 'characterless' (*Idher Udher Ke Adamiyo se Muh Marvati Firthi Hai*) (confronted with portion C to C-1 of Statement mark
C PW9/B wherein it is so recorded. It is wrong to suggest that I have stated to the police officials that accused stated that both our children were not from him and were due to my illicit relationship. It is wrong to suggest that due to this reason I was much perturbed because of his such behaviour or that my husband
D do not have affection with my both the sons and hate them. (confronted with portion D to D-1 of statement mark PW9/B wherein it is so recorded). It is wrong to suggest that after releasing my husband from Nasha Mukti Kender he has taunted me that I used to call different boys and committed wrong act/sexual act with them and both the sons are not his sons and threatened to kill
E them or that he has gave beatings to me and thrown me from his house and when I requested him to take both the sons with me, he refused and stated that I will kill them as they were both illegal child. (Confronted with portion E to E-1 of my statement mark PW9/B where in it is so recorded).

F On the same night, police has informed me on telephone that my both the sons has drown in the Haiderpur canal and have also stated that this fact was stated by the accused himself. I have also not stated to the police that I have suspicion over my husband that he has killed both my child and falsely stated to the police that they were drown themselves. (Confronted with portion F to F-2
G of my statement mark PW9/B wherein it is so recorded). It is wrong to suggest that I have been won over by the accused or that he being my husband I am not deposing the true facts of the case or that I have been compromised or that I was emotionally blackmail by the accused to depose in his favour. It is wrong to

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suggest that the signatures belongs to me on mark PW9/A and voluntarily I have given statement to the police officials. It is wrong to suggest that accused has never suspicion on my character or that to faded this issue I am deposing falsely. It is wrong to suggest that I am deposing falsely.

Xxxxxx By Ms. Sadhna Bhatia (Amicus Curie) for the accused Prem Singh.

It is correct that my husband loved my both the sons and I was never beaten or abused by my husband. It is correct that myhusband has never been commenting on my character and never told me characterless. It is correct that my relation with my husband were remained cordial after marriage."

6.3. The fact that after the event in question, the appellant visited the office of Haiderpur Water Plant as also the nearby Petrol Pump and suggested that his sons had accidentally fallen into the canal had not been of much dispute. These facts were duly established in the testimony of PW-4 Mahesh Kumar Sharma and PW-6 Komal Ram related with Haiderpur Water Plant as also by PW-1 Naresh Kaushik, the delivery boy at Indian Oil Petrol Pump. In fact, PW-1 also testified to the facts that the appellant made a call from his petrol pump to number 100 to police and that the police officers visited the petrol pump and collected relevant evidence including the bill of telephone used by the appellant. For ready reference, we may only take note of the testimony of PW-1 Naresh Kaushik as follows: -

"PW 1 Sh. Naresh Kaushik S/o Ram kumar Kaushik R/o VPO Vill Kiwana Tehsil Sambhalkha Disstt. Panipat, Haryana

On S.A.

On 3.05.2009 was working as delivery boy at Indian Oil Petrol pump in the name of Ridge view Shalimar Bagh, Opposite Haider pur water plant.On that day at about 8:15 p.m. I was on duty there accused prem singh present in the court today (correctly identified) came at said petrol pump and told me that, he had come along with his two sons for walking near Hadarpur Canal and while his both the sons were playing near the canal they fell down in the canal and drowned in his presence. He also told me that he tried to save his sons by jumping in the canal and swimming

A to some distance but he was unable to save them. He requested me to permit him to make a call at no. 100.I permitted him to inform the police by dialing no. 100 from the phone which was installed at the office of my said petrolpump bearing no. 27492035. In my presence he again narrated the same facts to the police on telephone.

B

On 06.05.2007 some police officials alongwith accused whose name I came to know Prem Singh arrived at my petrol pump and I informed the police that he is the person who had made the telephonic call to police on 03.05.2009 at 8.15 p.m from my petrol pump. On that day IO recorded my statement.

C

On 11.07.09 IO inspector Partap Singh arrived at my petrol pump and he asked me to provide the bill of telephone no. 27492035. The said telephone no. is in the name of Sh. Narender Kumar Mahajan (owner of the said petrol pump). I handed over the photocopy of the bill of said telephone no. from 01.02.09 to 31.03.2009. The said bill was taken in police possession vide seizure memo Ex. PW1/A signed by me and the photocopy of the said bill is marked PW1/A signed by me at point A.

D

xxxxx by Ms. Sadhna Bhatia, Amicus Curie Ld. Counsel for the accused.

E

Accused Prem Singh came to petrol pump on 03.05.2009 at about 8.15 p.m. and remained their for about 5 minutes. My first statement was recorded on 06.05.2009 at the petrol pump. No other witness was examined at petrol pump on that day."

F

6.4. The fact that the dead bodies of both the children carried various injuries including those on neck and the medical opinion that they died due to asphyxia as a result of manual strangulation came to be duly established in the testimony of PW-14 Dr. V.K. Jha and the post-mortem reports Ex. P-14/A and Ex. P-14/C. The statement of PW-14 could also be usefully reproduced as under: -

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"PW-14. Statement of Dr. V.K. Jha, Medical Officer, BJRM Hospital, Jahangipuri, Delhi.

on SA

On 4.5.09 I conducted the postmortem of the dead body of Jitesh s/o Prem Singh aged about 9 years sent by SI Sunil Kumar

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of PS Prashant Vihar with the alleged history of found dead in Haiderpur Water Plant.

I observed following external injuries on the dead body of the deceased.

1. Two scratch abrasion over front of neck 1 cm. X .5 cm each.

2. Right hand has washer man appearance.

3. Both feet were wet and smeared with sand particles.

4. Lower lip was contused.

On internal examination of neck, the neck tissue was bruised on front end side. Bruising was also observed in the midline over thyroid cartilage. After postmortem examination I opined cause of death as asphyxia as a result of manual strangulation. All the signs were ante-mortem in nature and neck injury was sufficient to cause death in ordinary course of nature. Time since death was approximately 19 hours. My detailed PM report is Ex. PW14/A which bears my signatures at point A.

Blood and viscera of the deceased was preserved in common salt to rule out common poisoning.

At this stage, I have seen the viscera report which is Ex. PW14/B in which no common poison have been detected. After perusal of the viscera report and PM report I am of the final opinion the cause of death is asphyxia as a result of manual strangulation inflicted by other party.

On 4.05.09 I also conducted the postmortem of the dead body of Sunny s/o Prem Singh aged about 6 years sent by SI Sunil Kumar of PS Prashant Vihar with the alleged history of found dead in Haiderpur Water Plant.

I observed following external injuries on the dead body of the deceased.

1. Left hand has washerman appearance.

2. Both feet were wet and smeared with sand particles.

3. Three scratch abrasion of size 1cm x0.5 cm on front two in numbers and on left side one in number.

A On internal examination of neck, the neck tissue was bruised on front end sides and laceration over thyroid cartilage. After postmortem examination I opined cause of death as asphyxia as a result of manual strangulation. All the signs were ante-mortem in nature and neck injury was sufficient to cause death in ordinary course of nature. Time since death was approximately 19 hours. My detailed PM report is Ex. PW14/C which bears my signatures at point A.

B

Blood and viscera of the deceased was preserved in common salt to rule out common poisoning.

C At this stage, I have seen the viscera report which is Ex. PW14/B in which no common poison have been detected. After perusal of the viscera report and PM report I am of the final opinion the cause of death is asphyxia as a result of manual strangulation inflicted by other party.

D xxxxx By Ms. Sudhna Bhatia amicus curiae for accused.

It is incorrect to suggest that I have not conducted the postmortem of dead body of Jitesh and Sunny. It is incorrect to suggest that I have signed the report and manipulated the same at the instance of police."

E 6.5. The other prosecution witnesses had essentially been the police personnel related with the process of investigation. Of these witnesses, PW-18 SI Sunil Kumar asserted that upon receiving the information about drowning of the children, he reached the water treatment plant where the dead bodies were taken out from the canal and were identified by the appellant. He further stated to have sent the dead bodies for post-mortem examination. He also testified to the facts regarding recording of the statements of other witnesses including mother of the deceased and, after registration of the case, having handed over investigation to PW-17 Inspector Pratap Singh. The witness further asserted that the appellant made a disclosure statement and memos and site plans were prepared as per his statement. The cross-examination of this witness PW-18 Sunil Kumar reads as under: -

F

G

"On 3.5.2009, I reached at the spot at Haiderpur Canal alongwith constable Het Ram around 7.45 p.m. When we reached there, Prem Singh alongwith 1-2 persons were present there. Inspector Sudhir reached at the spot at about 8.30p.m and crime team officials

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reached at the spot after sometime and remained there for about 1 hour. I recorded the statement of witnesses namely Rajender Yadav and Sunita on 03-04/05/09 at police post Rohini. It is incorrect to suggest that doctor has given the opinion about the cause of death at my instance.

It is wrong to suggest that no disclosure statement was made by the accused. It is further wrong to suggest that I recorded statement of witnesses not as per their true version. It is wrong to suggest that I am deposing falsely or that accused is innocent and has been falsely implicated in this case or that I did not conduct the investigation and did not prepare the documents are prepared by me. It is wrong to suggest that accused was apprehended on 03.5.2009 and illegally detained in the PS and later on he was falsely implicated in this case. It is further wrong to suggest that I am deposing falsely."

6.6. The Investigating Officer PW-17 Inspector Pratap Singh testified to various processes undertaken in the course of investigation. His cross-examinationreads as under: -

"On 06.05.09 I reached the spot i.e., Haiderpur Water Treatment Plant at about 3-4 am along with complainant and SI Sunil and other staff and remained there about one hour. We were in uniform. Accused was pointed out at a distance of 20 meters. Voltd. At that time we were hiding behind the bushes and were not visible to the accused. We immediately overpowered the accused. Firstly I apprehended the accused. All the writing work was done while sitting on the bus stand. It is correct that place of apprehension of the accused is thorough fair. We asked three/four passer by to join the investigation but they refused. I did not give any notice to them and no action was taken against them. Voltd. I have no time to issue notice to public persons as accused was in our custody. All the memos were prepared either by me or under my supervision by the police staff available at the spot. Ex. PW7/D was not in my handwriting. It is wrong to suggest that accused was apprehended on 03.05.09 from the Haiderpur water treatment plant. It wrong to suggest that no disclosure statement was made by the accused. It is wrong to suggest that all the proceedings were conducted while sitting in the police station. It is wrong to suggest that the accused is innocent who is falsely implicated in

this case or that he did not commit the alleged offence or that I did not conduct investigation properly."

Stand of the appellant

7. In his examination under Section 313 CrPC, the circumstances appearing from the evidence led by the prosecution were put to the appellant. It is noticed that the appellant either denied the circumstances and allegations put to him or stated his want of knowledge as regards statements of the witnesses who supported the prosecution case. As regards his admission to the rehabilitation centreand discharge, the appellant stated that such facts were a matter of record. Finally, his assertion had been that he was innocent and the witnesses had deposed falsely against him. However, he declined to lead any evidence in defence.

Trial Court found the appellant guilty and awarded life imprisonment

8. After having heard the parties and having examined the record in its totality, the Trial Court found the prosecution case amply established by cogent and convincing chain of circumstances, pointing only to the guilt of the appellant, who caused the death of victim children by strangulation and also caused the evidence to disappear by throwing the dead bodies into the canal. The appellant was, therefore, convicted of the offences under Section 302 and 201 IPC and was sentenced accordingly.

8.1. The Trial Court summarised the chain of circumstances bringing home the guilt of the appellant and held as under: -

"37. In the present case, admittedly, there cannot be any eye witness to the occurance and the prosecution has put forward the circumstances and circumstantial evidence to bring home the guilt of the accused which certainly cannot be ignored. The prosecution has placed on record certain circumstances to bring home guilt of the accused regarding murdering of his sons which are as follows:

(a) **Accused Prem Singh and his deceased sons namely Jitesh and Sunny were lastly admittedly together with him till they were alive**

(b) Motive and opportunity for the accused Prem Singh to commit murder of his sons.

(c) Conduct of the accused

(d) Medical Evidence

38.**(a) Accused Prem Singh and his deceased sons Jitesh and Sunny were lastly admittedly together with him till they were alive:** As already discussed at length, it is established and proved on the record that the accused Prem Singh who admittedly, was the father of the deceased Jitesh and Sunny were lastly together in their house after his wife Sunita had gone to her maternal uncle's house leaving the custody of both the said children with the accused Prem Singh and the accused himself has admitted that thereafter, he took both the children Jitesh and Sunny to Haiderpur Canal for a walk and to enjoy and the accused has stated that while both the children were playing, they fell down in the Canal and got drowned and though he tried to save them by jumping into the canal but he did not succeed, hance as such it is nowhere in dispute that the accused and the deceased children were admittedly together lastly till they died.

(b) Motive & Opportunity for the accused Prem Singh to commit said offence: The accused Prem Singh was certainly having ample opportunity to strangulate his children as it was about 7.45 p.m on that day when he took them to the Canal and admittedly, none else was present there. It is also shown from the testimonies of the prosecution witnesses as already discussed at length that the accused had doubt over the character of his wife Sunita and had preconceived notion that Jitesh and Sunny were not his sons and so, he had developed a grudge against his wife and children and finding an appropriate opportunity as his wife was not in the house, he took them to Haiderpur Canal with the motive to eliminate them and asked the children to attend call of nature after which when his elder son come first, he strangulated him and thrown his dead body in the Canal and then his other son come whom also he strangulated and then had thrown his dead body in the Canal and thereafter, he himself jumped into the Canal to pretend that he had made efforts to save them which in fact has not yielded him any benefit.

(c) Conduct of the accused : The conduct of the accused Prem Singh has already been discussed at length that firstly he took both his sons to the Haiderpur Canal where he manually strangulated them and threw their dead bodies in the Canal and

A then he himself jumped into the Canal and swam for a considerable distance and came out, so that he could tell the others that he had made genuine efforts to save them but in vain which has been falsified as already discussed. It is also proved on the record that he himself narrated so to the officials of Water Treatment Plant and then to the employee of the nearby Petrol Pump from where he also telephonically informed the police officials and then told the same story to the police officials. In fact, it was after the postmortem examinations of both the children, that it was crystal clear that they had not died of drowning but of manual strangulation prior to their drownings which injuries were sufficient in ordinary course of nature to cause their deaths and after trying to mislead police officials, he joined investigation to show his bonafide which has proved futile for the accused.

(d) Medical Evidence : As per record, though the accused Prem Singh has stated that both the children had died of drowning and had seen them drowning, yet their postmortem examinations reports have falsified his version which have been duly proved on records by Dr.V.K.Jha who has categorically deposed that both the children were firstly manually strangulated which injuries were antemortem in nature and were sufficient in ordinary course of nature to cause their deaths and the deaths of both the deceased were the result of such strangulation and not of drowning which have entirely falsified the version of the accused that his sons had died due to drowning and it is proved that they did not die of drowning but of manual strangulation.

39.Considering the totality of the facts and circumstances, on the basis of the evidence adduced by the prosecution, as placed on the record and in view of above discussion, Court is of the considered opinion that the witness examined by the prosecution are cogent, convincing and have inspired the confidence of the court in so far as they have come forward with true picture of the occurance and sufficient corroboration is available on the record to ocular testimonies of the prosecution witnesses through documentary evidence and as such no artificiality or exaggeration is observed in the case of the prosecution. The court is of the considered opinion that :-

(1) There is sufficient evidence on the record as lead by the prosecution regarding occurance and that the accused Prem Singh

had murdered his sons Jitesh and Sunny which has nowhere been rebutted or shown to be false or manipulated and it is duly proved that he was lastly present with both the children and had strangulating them after which he threw their dead bodies in the Canal and accordingly there is sufficient evidence on record from which the inference of guilt is sought to be drawn against the accused Prem Singh which has been cogently and firmly established on record.

(2) Prosecution has also proved that the circumstances have unerringly pointed towards the guilt of the accused Prem Singh regarding committing murders of Jitesh and Sunny at the relevant date, time and place after which he also caused the evidence to disappear by throwing their dead bodies in the Canal at which point of time, he intended to screen himself from Legal Punishment and gave information in this regard which he himself knew and believed to be false.

(3) The prosecution has also proved circumstances, which taken cumulatively, form a chain so complete that there is no doubt at all, if the accused Prem Singh had not murdered his sons namely Jitesh and Sunny at the relevant date, time and place.

40.(a) In view of foregoing discussion, the court is of the considered opinion that as per material placed on the record, the witnesses examined by the prosecution are cogent, convincing and inspire confidence of the court in as far as they have come forward with true and clear picture of the occurance and infact and sufficient corroboration is available on record on all material aspects to the ocular versions of the witnesses not only from each other but even from the documentary evidence which has led sufficient support to the witness alongwith medical evidence wherein Dr. V.K.Jha has categorically opined and prayed that both the children Jitesh and Sunny had not died due to drowning but died due to the manual strangulation which injuries were antemortem in nature which were sufficient in ordinary course of nature to cause their deaths which have nowhere been shown to be false or manipulated and the testimonies of prosecution witnesses do not suffer any inherent or grave infirmities which go to the root of the matter and shake their basic versions.

A (b) Accordingly, considering the above, in the given circumstances and on the basis of the material as placed on the record, the only irresistible conclusion that can be drawn is that the accused Prem Singh had murdered both this sons namely Jitesh and Sunny by manually strangulated them and caused their deaths which injuries have been proved to be antemortem and sufficient in ordinary course of nature to cause their deaths and it is also proved on the record that after murdering them, he had thrown their dead bodies in the canal, so that the evidence regarding commission of his offence of murdering his sons is destroyed with intention to save and screen himself from the legal punishment. Since prosecution has succeeded in bringing home guilt of the accused on record beyond reasonable doubt, accordingly, accused Prem Singh is convicted for committing offences as punishable under section 302/201 IPC. Let he be heard on the point of sentence."

D 8.2. The Trial Court further heard the parties on the question of sentence. The submissions on behalf of the appellant in this hearing had been for leniency in view of the facts that he had no criminal antecedents and had been undergoing trial since the year 2009; and further that he had a family to support and was the sole bread earner. The Trial Court, in its order dated 08.09.2011, after taking note of all the facts and E circumstances of the case and the nature of crime committed by the appellant, considered it appropriate to award the necessary punishments and, accordingly, sentenced him to rigorous imprisonment for life with fine of Rs. 10,000/- and default stipulation for the offence punishable under Section 302 IPC; and to rigorous imprisonment for a period of 3 F years with fine of Rs. 2000/- and default stipulation for the offence punishable under Section 201 IPC, with concurrent running of punishments.

High Court dismissed the appeal filed by the appellant

9. In challenge to the conviction before the High Court, it was G essentially contended on behalf of the appellant that all the independent witnesses did not support the prosecution case and there were missing links in the chain of events, particularly when the allegations of strained relationship of the appellant and his wife as also the allegations of the appellant doubting the chastity of his wife having fallen to the ground. It H was contended that in the given circumstances, there were no reason

for which the appellant would have killed his own children. *Per contra,* it was submitted on behalf of the respondent-State that the scientific evidence clearly established the fact that the children died because of manual strangulation and not on account of drowning; and when they were lastly seen in the company of the appellant, burden was heavy on him to explain the whereabouts of his children as also the manner in which they came to be strangulated. It was contended that rather than discharging this burden, the appellant gave false information about accidental drowning of the children, as clearly established by independent witnesses.

9.1. The High Court again analysed the entire evidence on record and, while rejecting the contentions that the appellant was falsely implicated or that there were material discrepancies in the prosecution case, dismissed the appealby its impugned judgment and order dated 29.02.2016 while observing, *inter alia*, as under: -

> "52. Having discussed the testimonies of material witnesses in detail in the paragraphs aforegoing, we may note that PW-4, Mahesh Kumar Sharma and PW-6, Komal Ram are material witnesses. Both the witnesses have testified that they were on duty at Haidarpur Water Treatment Plant on the fateful day, *i.e.* on 03.05.2009. Both have also testified that the appellant had first approached Mahesh Kumar and informed him that he had come to the canal along with his two sons who were playing near the canal, they fell down and drowned. As per the testimony of Mahesh Kumar, appellant had met him at about 7:45 p.m. and Mahesh Kumar had passed over this information regarding recovery of dead bodies at number 100. On the truthfulness of this statement, there has been no cross-examination on behalf of the appellant. PW-6, Komal Ram has also testified on the lines of PW-4. A very important factor which is to be noticed at this stage is that there is no cross-examination by the appellant regarding his not having gone to canal along with sons and having not informed PW-4 and PW-6 regarding the drowning of his sons who were with him and had drowned while playing.
>
> 53.Naresh Kaushik, PW-1 has testified that on 03.05.2009 when he was working as a delivery boy at Indian Oil Petrol Pump, Shalimar Bagh opposite Haiderpur Water Plant at about 8:25 p.m., the appellant came to him and told him that he was walking near

Haiderpur Canal with his sons and while his both the sons were playing, they fell down in the canal and drowned despite his having tried to save them by jumping in the canal. Appellant requested him to allow him to make a call at 100 number. In his presence, on telephone number 27492035, the appellant narrated the above facts to the police officials. On 06.05.2009, he had identified the appellant in the presence of the police officials as the person who had made a call at 100 number on 03.05.2009 at 8:15 p.m. Bill of telephone number 27492035 Ex.PW1/A and the testimony of PW-1 stand established that a phone call was made by the appellant at 100 number.

54.PW-1, Naresh Kaushik had also identified the appellant who had made phone call from his phone. We may, at this stage, also note that although the wife of the appellant had turned hostile, but as far as the children last seen in the company of the appellant is concerned, it stands established by the testimony of PW-9, Sunity Yadav, wife of the appellant. She testified that *"on the day of incident, I went to the house of my maternal uncle as my Nani was ill leaving my both the sons with their father/accused"*.

55.In view of the testimonies of PWs-1, 4, 6 and 9, in our view, it stands firmly established that the children were with their father as per the testimony of PW-9. As per the testimonies of PWs-1, 4 and 6, the appellant had himself informed them that his children had come with him at the canal and while playing, they have got drowned. The testimonies of PWs-1, 4 and 6 on this aspect has remained unrebutted.

56.Dr. V.K. Jha, PW-14, has testified that cause of death is asphyxia as a result of manual strangulation and all the injuries were ante-mortem in nature and neck injury on their persons was sufficient to cause their death in the ordinary course of nature. The evidence of Dr. Jha clearly points out that the children did not die due to drowning but on account of manual strangulation. Neither the appellant has been able to make any dent in the examination of this witness nor there is any reason for us to disbelieve the testimony of Dr. V.K. Jha.

57.The motive stands established. Upon reading of the testimony of PW-7, Mahender Kumar Yadav, the deceased were the sons of his niece Sunita. He has testified that the appellant used to

comment on the chastity of her niece Sunita and accused her of bad character. He was in the habit of drinking liquor and beating Sunita. This witness has also testified that the appellant used to comment that the children did not belong to him but to someone else and, in fact, had attempted to kill the children in the park by giving them electric shock. However, the children were saved by their mother. In the past, Sunita had remained in the house of PW-7 for 5-6 months, however, she joined the company of her husband but he continued to misbehave with her and used to talk inappropriately and accuse her of indulging in sexual activities. Even on 03.05.2009, as per the testimony of PW-7, the mother of the deceased had come to his house and informed him that appellant was quarrelling with her. He had tried to reconcile the matter, but could not succeed. On the same day, he received a phone call by the police that both the children of his niece had died by drowning in the canal. PW-7 has further testified that he had suspected that both the children had not drowned on their own but they were killed by the appellant.

58.PW-8, Rajender Yadav has also testified that his niece was married to the appellant and whenever Sunita came to their house, she complained that appellant used to abuse her and beat her as well as the children. On learning the news about death of both the children, this witness also testified that he had strong suspicion that appellant had drowned his children on the issue of character of Sunita.

59.In view of the testimonies of PW-7 and PW-8, motive stands clearly established that the appellant used to beat his wife and children under the influence of liquor. He suspected that the children did not belong to him but belong to someone else. The appellant informed PW-1, PW-4 and PW-6 that the children had drowned, whereas as per the testimony of PW-14, Dr. V.K. Jha, external injuries were found on the dead bodies and the cause of death was manual strangulation. Thus, in our view, the conduct of the appellant also points towards his guilt.

60.In the light of the testimonies discussed above, the submission of learned counsel for the appellant that the appellant has been falsely implicated or that there are material discrepancies in their testimonies or the fact that the wife of the appellant has turned

hostile thus there is no ground to convict the appellant, are all without any force. The Trial Court has passed a well-reasoned order taking into consideration the testimonies of all the material witnesses which have been discussed hereinabove.

61.We find that there is no merit in the present appeal and the same is accordingly dismissed."

Rival Submissions

10. Assailing the judgment and order aforesaid, learned counsel for the appellant has put forward a variety of submissions to argue that conviction of the appellant remains unsustainable. The learned counsel has contended that the chain of circumstances in this case is not complete, particularly when the allegations of strained relationship of the appellant and his wife have not been proved and in any case, the prosecution has failed to establish motive for the appellant to murder his own children; that the appellant was incapable of understanding the nature of his act when admittedly he was in the habit of consuming liquor, was admitted to rehabilitation centre, and his discharge was taken against the advice of the centre; that the Trial Court failed in its duty to examine the mental capacity of the appellant in terms of Section 329 CrPC and hence, the entire trial stood vitiated; and that in any case, *mens rea* could not be imputed on the appellant, who deserves to be given benefit of doubt or at least the benefit of the Exceptions to Section 300 IPC.

10.1. In the first place, learned counsel for the appellant has contended that in case of circumstantial evidence, there ought to be a complete chain of circumstances pointing towards nothing else but guilt of the accused; and in such cases, motive is of critical importance. In the present case, according to the learned counsel, the motive set up by the prosecution about the alleged strained relationship of the appellant with his wife was not a motive strong enough for the appellant to commit the murder of his children and, in any event, wife of the appellant, PW-9, did not support the case of the prosecution regarding such allegations. The learned counsel would, therefore, contend that an important link in the chain of circumstances, i.e., motive, having not been established, the appellant deserves to be acquitted.

10.2. The main plank of the submissions on behalf of the appellant had been with reference to his alleged addiction to liquor and his admission to the rehabilitation centre. Learned counsel for the appellant would

argue, particularly with reference to the statements of PW-2 Puran Singh, cousin of the appellant, and PW-3 Jagbir, manager of rehabilitation centre,that the appellant was undoubtedly undergoing treatment for his addiction to liquor and was discharged against advice prematurely; and, the evidence on record, read as a whole, lead to the position that the appellant could not have been treated as a person capable of understanding the nature of his act. According to the learned counsel, even if the evidence of PW-2 and PW-3 may not be sufficient to give the benefit of Section 84 IPC, it definitely gives rise to a doubt with regard to the mental capacity of the appellant. In this regard, the learned counsel has also referred to the additional documents placed on record to the effect that even post-conviction, the appellant has been treated for his mental condition; he was distinguished as a psychiatric case; and was admitted to the Central Jail Hospital for treatment.

10.3. With reference to the aforesaid factors concerning the mental capacity of the appellant, learned counsel would submit that the entire trial in the present case stands vitiated, for the Trial Court having omitted to examine the capacity of the accused-appellant in terms of Section 329 CrPC. Learned counsel has also referred to the decision of Gujarat High Court in the case of ***State of Gujarat v.Manjuben*: 2019 SCC OnLine Guj 6937** and has submitted that, in the present case, looking to the background factors concerning mental capacity of the appellant appearing in evidence, it was the duty of the Trial Court to examine if he was of unsound mind and consequently incapable of making his defence.

10.3.1. Learned counsel has further argued that when the prosecution and the investigating agency came across the evidence in relation to the mental condition of the appellant, it was their duty to have him medically examined and to place the evidence before the Trial Court. This having not been done, the infirmity, according to the learned counsel, ought to result in acquittal of the appellant. In this regard, the learned counsel has also referred to a decision of Bombay High Court in the case of ***Ajay Ram Pandit v. State of Maharashtra*: 2022 SCC OnLine Bom 3920**.

10.3.2. Learned counsel for the appellant has further submitted that although in the present case neither the public prosecutor nor the defence counsel raised the issue of mental capacity of the appellant, the Trial Court was under an obligation to ascertain his mental capacity, particularly in view of the *prima facie* evidence available before it.

According to the learned counsel, it was the duty of the Trial Court to have made such an assessment and for that purpose, conclusive evidence was not required and presence of some doubt itself was sufficient. The necessary enquiry having not been made, the trial stands vitiated and consequently, the benefit ought to be extended to the accused-appellant. The learned counsel has also referred to the decision in ***A.R. Antulay v. R.S. Nayak*: (1988) 2 SCC 602** to submit that the act of the Court should not harm a litigant.The learned counsel has even referred to a decision of the Supreme Court of the State of Delaware in ***Eric Dolby v. State of Delaware*** decided on 02.03.2012 to submit that therein the accused was permitted to raise the defence of competence even though it was not as such raised by the counsel and has submitted that the Trial Court ought to have ordered examination of the accused with regard to the propensity/capacity.

10.3.3. Learned counsel has extended his submissions to the effect that since the evidence of PW-2 and PW-3 gave rise to a doubt in relation to the mental capacity of the appellant, the Trial Court ought to have given an opportunity to the appellant to explain the circumstances of such normality/abnormality at the time of his examination under Section 313 CrPC because these aspects had a bearing on his capacity and ultimately on his defence. The learned counsel has submitted with reference to an observation of this Court in the case of ***Rahul v. State of Delhi, Ministry of Home Affairs and Anr*.: 2022 SCC OnLine SC 1532**, that a Judge is not expected to be a passive umpire but is supposed to actively participate in the trial, and to question the witnesses to reach to a correct conclusion. The learned counsel would submit that, in the present case, the witnesses examined to establish the guilt were not cross-examined on the relevant factors, particularly as regards mental capacity of the appellant, which ought to have been ensured by the Trial Court.

10.4. In the last limb of submissions, learned counsel for the appellant has submitted that even if it be taken that the evidence on record did not establish conclusively the mental incapacity of the appellant, it indeed raised a reasonable doubt as regards existence of all the ingredients of Section 300 IPC, including *mens rea* and hence, the appellant was entitled to be extended the benefit of doubt. The learned counsel would also submit in the alternative that the conviction, if at all, ought to have been under Section 304 IPC. In this regard, the learned

counsel has referred to a decision of Calcutta High Court in the case of ***King-Emperor v. Tincouri Dhopi*: 1922 SCC OnLine Cal 90** to submit that therein the mental state of the appellant, who was a habitual ganja smoker, was taken into consideration and accordingly, capital sentence was converted to transportation for life to meet the ends of justice.

10.5. Therefore, according to the learned counsel for the appellant, in view of serious infirmity in the trial, benefit of doubt deserves to be given to the appellant and in the alternative, the conviction deserves to be converted to one under Section 304 IPC and sentence deserves to be reduced to the period of imprisonment already undergone.

11. While refuting the submissions made on behalf of the appellant, learned counsel for the respondent-State has argued that the circumstantial evidence on record undoubtedly lead to the conclusion of guilt of the appellant and no case for interference is made out.

11.1. Learned counsel for the respondent-State has emphatically submitted that the fundamental fact remains rather undeniable that the appellant was last person in the company of the deceased children and is amply established by the deposition of PW-1, the attendant at the petrol pump, and PW-4 and PW-6, the personnel on duty at the water treatment plant. This apart, the fact that the children were in the company of the appellant is established even in the testimony of PW-9, wife of the appellant. Learned counsel would submit that there is nothing on record to suggest the presence of any other person with the deceased children at the time and place of occurrence; and the appellant has not shown his presence at any other place or his having parted with the company of the deceased. Learned counsel has further argued that the medical evidence of PW-14 leaves nothing to doubt that the cause of death of the victim children had been asphyxia as a result of manual strangulation. Thus, according to the learned counsel, in the given set of circumstances, when the death of the victim children was homicidal in nature and the appellant rather attempted to project a false narrative that they fell into the canalaccidentally, the concurrent findings of his conviction cannot be said to be suffering from any infirmity.

11.2. Learned counsel has referred to Section 106 of the Indian Evidence Act and a decision of this Court in the case of ***Sabitri Samantaray v. State of Odisha*: 2022 SCC OnLine SC 673** to submit that in the present case, the appellant having failed to explain the

A circumstances which were within his special knowledge, particularly after the prosecution had clearly established the basic facts about the deceased being lastly in the company of the appellant and that their death was homicidal in nature with manual strangulation, the want of explanation of the appellant definitely provides a strong link in the chain of events.

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11.3. As regards motive, learned counsel for the respondent-State has particularly referred to the testimonies of PW-7 and PW-8 to submit that the facts were clearly established that the relationship between the appellant and his wife was strained; and the reason for such strained relations was the appellant's constant suspicion over the character of his wife and in turn,his doubts on the paternity of the victim boys. Thus, according to the learned counsel, a case of strong motive for killing of the victim children is also established where the appellant suspected them to not be his sons.

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11.4. As regards the plea of unsoundness of mind of the appellant, learned counsel for the respondent-State has submitted that such a plea was never raised in the defence or in evidence or in appeal or even in the petition filed before this Court. Learned counsel has further submitted that as a matter of legal principle, if previous history of accused person's insanity is revealed, the investigating officer is duty bound to subject him to medical examination and to submit the evidence to the Court; and failure to do so may amount to serious infirmity which may lead to benefit of doubt to the accused but, in such cases, the onus of producing evidence with respect to the conduct and mental condition is on the accused and the Court is not expected to presume to the contrary. While relying upon a decision of this Court in the case of ***Bapu alias Gujraj Singh v. State of Rajasthan*: (2007) 8 SCC 66**, learned counsel has submitted that the plea of unsoundness of mind *qua* the appellant is untenable not just owing to the fact that no such plea or evidence was placed during the trial or even before the High Court but also because the appellant had no previous history of insanity as such. In this regard, learned counsel has referred to the testimony of PW-3, the manager of rehabilitation centre to the effect that during the period of admission, the appellant's behaviour was like an ordinary prudent man and he was never administered any medicine for mental illness, for no such illness having been observed nor any previous history having been given by his family members.

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11.5. Learned counsel for the respondent-State has also submitted that the plea of unsoundness of mind, if at all, could only be raised by the defence to rule out the forming of *mens rea* but a case of purported subsequent mental illness cannot be raised to invoke the exceptions of Section 300 IPC. Thus, according to the learned counsel, reference to the treatment of the appellant post-conviction in psychiatry ward because of the complaints of abnormal behaviour is of no avail to the appellant. Learned counsel has referred to decisions of this Court in ***Shrikant Anandrao Bhosale v. State of Maharashtra*: (2002) 7 SCC 748** and ***Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*: AIR 1964 SC 1563.**

11.6. Learned counsel for the respondent-State has further submitted that the suggestions to the effect that the appellant might be having requisite knowledge but was lacking an intention to commit the crime remains untenable for the reasons,*inter alia,* that the appellant meticulously planned the crime by taking his children to the canal at a time when he was vested with their sole custody in the absence of his wife; he mercilessly strangulated the children one by one and if at all anopportunity of realisation were to be visualised, at least after killing the first child he had ample time and opportunity to restrain himself and not to kill the other one. This apart, according to the learned counsel, after gruesome killing of the two children, the appellant enacted an elaborate ploy by interacting with the persons in the vicinity and attempted to create a false narrative of drowning of the children. In the given set of facts, according to the learned counsel, the appellant's case does not fall under any of the exceptions contained in Section 300 IPC and hence, the concurrent findings against him call for no interference.

The scope and width of this appeal

12. As noticed, the Trial Court and the High Court have concurrently recorded the findings in this case that the prosecution has been able to establish the chain of circumstances leading to the only conclusion that the appellant is guilty of the offences of murder of his sons and causing disappearance of evidence. Though the parameters of examining the matters in an appeal by special leave under Article 136 of the Constitution of India have been laid down repeatedly by this Court in several of the decisions but, having regard to the submissions made in this case, we may usefully reiterate the observations in the case of ***Pappu v. The State of Uttar Pradesh:* 2022 SCC OnLine SC 176** wherein,

A after referring to Articles 134 and 136 of the Constitution of India and Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 as also with a detailed reference to the relevant decisions, this Court has summed up the subtle distinction in the scope of a regular appeal and an appeal by specialleave in the following words: -

B "**20**..... In such an appeal by special leave, where the Trial Court and the High Court have concurrently returned the findings of fact after appreciation of evidence, each and every finding of fact cannot be contested nor such an appeal could be dealt with as if another forum for reappreciation of evidence. Of course, if the assessment by the Trial Court and the High Court could be C said to be vitiated by any error of law or procedure or misreading of evidence or in disregard to the norms of judicial process leading to serious prejudice or injustice, this Court may, and in appropriate cases would, interfere in order to prevent grave or serious miscarriage of justice but, such a course is adopted only in rare D and exceptional cases of manifest illegality. Tersely put, it is not a matter of regular appeal. This Court would not interfere with the concurrent findings of fact based on pure appreciation of evidence nor it is the scope of these appeals that this Court would enter into reappreciation of evidence so as to take a view different than that taken by the Trial Court and approved by the High Court."

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12.1. Keeping the principles aforesaid in view, we may examine if the concurrent findings call for any interference in this case while reiterating that wholesome reappreciation of evidence is not within the scope of this appeal, even though we have scanned through the entire evidence in order to appropriately deal with the contentions urged before F us.

The principles relating to circumstantial evidence; burden of explanation; hostile witness; and motive

13. Learned counsel for the appellant has argued that there had G been several shortcomings in the prosecution case and that the relied upon factors, including the medical evidence and the so-called falsity of explanation of the appellant, are not sufficient to arrive at a finding of guilt against the appellant, particularly when the allegations relating to motive have not been established. While dealing with such submissions, we may usefully take note of the basic principles applicable to the case.

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13.1. The principles explained and enunciated in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra*: (1984) 4 SCC 116** remain a guiding light for the Courts in regard to the proof of a case based on circumstantial evidence. Therein, this Court referred to the celebrated decision in ***Hanumant v. State of Madhya Pradesh:* AIR 1952 SC 343** and deduced five golden principles of proving a case based on circumstantial evidence in the following terms:-

> "**152 .....** It may be useful to extract what Mahajan, J. has laid down in *Hanumantcase:*
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> > "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must besuch as to show that within all human probability the act must have been done by the accused."
>
> **153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
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> (*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned"must or should"and not "may be"established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra*[6] where the observations were made:
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> "Certainly,it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental

[6] (1973) 2 SCC 793.

A distance between 'may be'and'must be'is long and divides vague conjectures from sure conclusions."

(*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused

B is guilty,

(*3*) the circumstances should be of a conclusive nature and tendency,

(*4*) they should exclude every possible hypothesis except the one to be proved, and

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(*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute

D the panchsheel of the proof of a case based on circumstantial evidence."

13.1.1. It is also pertinent to notice that in the said case of ***Sharad Birdhichand Sarda***, this Court also enunciated the principles for using the false explanation or false defence as an additional link to complete

E the chain of circumstances in the following terms: -

"**158**. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in *Deonandan Mishra* v. *State of Bihar*[7] to supplement his argument that if the defence case is false it would

F constitute an additional link so as to fortify the prosecution case……..

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said

G earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(*1*) various links in the chain of evidence led by the prosecution have been *satisfactorily proved*,

H [7] AIR 1955 SC 801: (1955) 2 SCR 570, 582.

(*2*) the said circumstance points to the guilt of the accused with reasonable definiteness, and

(*3*) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise……..."

14. Moving on to the other applicable provisions and principles, we may usefully take note of Section 106 of the Evidence Act, casting burden of proving a fact especially within knowledge of any person, and a few relevant decisions in regard to its operation *qua* an accused.

14.1. Section 106 of the Evidence Act reads as under: -

"**106. Burden of proving fact especially within knowledge.** —When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

14.2. In the case of ***Trimukh Maroti Kirkan v. State of Maharashtra*: (2006) 10 SCC 681,** the accused was charged of the murder of his wife; there had been allegations of ill-treatment of the deceased-wife by the accused-husband; and though the victim had been killed by strangulation, the information given to her parents as also to all in the village was that she had died on account of snakebite. After taking note of the facts of the case, this Court exposited on the principles governing the assessment of circumstantial evidence, the operation of Section 106 of the Evidence Act, and the effect of want of necessary explanation or giving of false explanation by the accused, *inter alia*, in the following passages: -

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland* v. *Director of Public Prosecutions*[8] — quoted with approval by Arijit Pasayat, J.

[8] 1944 AC 315: (1944) 2 All ER 13 (HL).

A in *State of Punjab* v. *Karnail Singh*[9].) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him…….

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

*** *** ***

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court."

14.3. The case of ***Sudru v. State of Chhattisgarh*: (2019) 8 SCC 333** had been the one where the appellant was charged of the murder of his son in his house; and the principal prosecution witnesses, including wife of the appellant, turned hostile to the prosecution but, the facts did come out of their testimony that the deceased was left alone in

[9] (2003) 11 SCC 271: 2004 SCC (Cri) 135.

the company of the appellant and the next day, the deceased was found dead. Taking note of the salient features of the case and operation of the requirements of Section 106 of the Evidence Act, this Court observed, as regards consideration of the relevant part of evidence of a hostile witness and the effect of failure on the part of the accused to discharge his burden, as follows: -

> "**6.** No doubt, in the present case all the witnesses who are related to the accused and the deceased have turned hostile. PW 1 Janki Bai, wife of the appellant and the mother of the deceased has also turned hostile. However, by now it is settled principle of law, that such part of the evidence of a hostile witness which is found to be credible could be taken into consideration and it is not necessary to discard the entire evidence...
>
> *** *** ***
>
> **"8.** In this view of the matter, after the prosecution has established the aforesaid fact, the burden would shift upon the appellant under Section 106 of the Evidence Act. Once the prosecution proves, that it is the deceased and the appellant, who were alone in that room and on the next day morning the dead body of the deceased was found, the onus shifts on the appellant to explain, as to what has happened in that night and as to how the death of the deceased has occurred.

14.4. Apart from the above, we may also usefully take note of the recent decision of this Court in the case of ***Sabitri Samantaray*** (supra). Therein, with reference to Section 106 of the Evidence Act, a 3-Judge Bench of this Court noted that if the accused had a different intention, the facts are especially within his knowledge which he must prove; and if, in a case based on circumstantial evidence, the accused evades response to an incriminating questionor offers a response which is not true, such a response, initself, would become an additional link in the chain of events. The relevant part of the enunciation by this Court reads as under: -

> "**19**. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on

A circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events."

15. As regards the relevancy of motive in a case based on B circumstantial evidence, the weight of authorities is on principles that if motive is proved, that would supply another link in the chain of circumstantial evidence but, absence of motive cannot be a ground to reject the prosecution case, though such an absence of motive is a factor that weighs in favour of the accused. In ***Anwar Ali and Anr. v. State of Himachal Pradesh*: (2020) 10 SCC 166,** this Court has referred to C and relied upon the principles enunciated in previous decisions and has laid down as under: -

"**24.** Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is D concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in *Suresh Chandra Bahri* v. *State of Bihar*[10] that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, E as observed by this Court in *Babu*[11], absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under:-

"*25*. In *State of U.P.* v. *Kishanpal*[12], this Court examined F the importance of motive in cases of circumstantial evidence and observed:

'*38*. … the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited G them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the

[10] 1995 Supp (1) SCC 80:1995 SCC (Cri) 60.
[11] (2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179.
H [12] (2008) 16 SCC 73: (2010) 4 SCC (Cri) 182.

evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one……...' A

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide *Pannayar* v. *State of T.N.*[13]).'''' B

Application of the relevant principles to the facts of this case

16. Keeping the aforesaid principles in view, when we examine the facts of this case and the concurrent findings of the Trial Court and the High Court, we find no substance in the contentions urged bylearned counsel for the appellant. C

16.1. It is amply established on record that the deceased children, aged 9 years and 6 years respectively, died an unnatural death and though the bodies were retrieved from canal, it had not been a case of their drowning but, as specifically proved by the post-mortem reports and the testimony of PW-14 Dr. V.K. Jha, the cause of their death had been D asphyxia as a result of manual strangulation. There is nothing on record to disbelieve the testimony of PW-14 Dr. V.K. Jha. The only line of cross-examination of this witness had been as if he did not carry out post-mortem examination of the dead bodies of the victim children and that he manipulated the report at the instance of police. We are unable E to find any substance or logic in this line of cross-examination. The fact that the dead bodies of the victim children were indeed retrieved from canal is hardly a matter of doubt and has indeed been established in the testimony of PW-18 SI Sunil Kumar, PW-17 Inspector Pratap Singh as also other private witnesses, including the relatives of the appellant and his wife. It had been too far-stretched to suggest that the medical officer F did not examine the dead bodies of the victim children, as sent to him by the investigating officer or his having manipulated the report. The evidence available on record, taken as a whole, leaves nothing to doubt that the victim children had been subjected to manual strangulation which resulted in their death. Obviously, their dead bodies were thereafter thrown in G the canal to project as if it were a case of drowning.

16.2. The fact that the deceased children, when alive, were lastly in the company of the appellant alone is also not of much doubt or debate. In this regard, even before looking at any other evidence, suffice it to

[13] (2009) 9 SCC 152: (2009) 3 SCC (Civ) 638: (2010) 2 SCC (Cri) 1480. H

notice that PW-9 Sunita Yadav, wife of the appellant, who otherwise did not support the prosecution case, clearly stated the crucial factthat on the day of incident, the children were left by her with the appellant. She indeed stated that *'on the day of incident, I went to the house of my maternal uncle as my Nani was ill leaving my both the sons with their father/accused'*. She later on received the call from the police station about demise of her sons. Therefore, it remains rather undeniable that the deceased children were lastly in the company of the appellant alone.

16.3. In regard to the chain of circumstances in the present case, the statements of three independent witnesses PW-1 Naresh Kaushik, delivery boy at the Petrol Pump as also PW-4 Mahesh Kumar Sharma and PW-6 Komal Ram, the personnel in-charge at the Water Treatment Plant assume significance, who testified to the facts that the appellant did visit them immediately after the incident and specifically stated before them that his sons had accidentally fallen into the canal. There is nothing on record to disbelieve the testimony of these witnesses. We have reproduced hereinbefore the statement of PW-1 Naresh Kaushik and it is noticeable that there had not been anything in his cross-examination which could create any doubt on his narration. Similar had been the position as regards the testimony of PW-4 and PW-6. In fact, PW-4 Mahesh Kumar Sharma was not cross-examined at all; and the cross-examination of PW-6 had also essentially been of a suggestion as if the accused-appellant did not meet him on the given day. When the statements of independent witnesses PW-1, PW-4 and PW-6 are read together with the statement of PW-9, wife of the appellant, not only the circumstance of the deceased children being lastly in the company of the accused-appellant is established but, further to that, it is also established that the appellant attempted to create a false narrative of accidental drowning of the children. This false narrative, in the facts of the present case, becomes another strong link in the chain of circumstances.

16.4. When the facts established by the evidence on record and the surrounding factors are put together, the chain of circumstances had unfailingly been that the deceased children were lastly seen alive in the company of the appellant; they died because of manual strangulation and obviously, their death was homicidal in nature; their dead bodies were recovered from the canal; and the appellant attempted to project

that they had accidentally fallen into the canal. In the given set of circumstances, when the deceased children were in the company of the appellant, who was none else but their father and when their death was caused by manual strangulation, the burden, perforce, was heavy upon the appellantto clarify the facts leading to the demise of his sons, which would be presumed to be specially within his knowledge. Thus, the principles of Section 106 of the Evidence Act operate heavily against the appellant.

16.4.1. It is, ofcourse, the duty of prosecution to lead the primary evidence of proving its case beyond reasonable doubt but,when necessary evidence had indeed been led, the corresponding burden was heavy on the appellant in terms of Section 106 of the Evidence Act to explain as to what had happened at the time of incident and as to how the death of the deceased occurred. There had not been any explanation on the part of the appellant and, as noticed, immediately after the incident, he attempted to create a false narrative of accidental drowning of the children. There had not been any specific response from the appellant in his statement under Section 313 CrPC either.

17. Taking all the facts and factors together, the chain of circumstances leading only to the hypothesis of the guilt of the appellant has been duly visualised and analysed by the Trial Court as also by the High Court. That being the position, learned counsel for the appellant has endeavoured to submit that an important link in the chain of circumstances, i.e., motive, has not been established and in that regard, reliance has particularly been placed on the statement of the wife of the appellant PW-9 Sunita Yadav, who did not support the prosecution allegations about strained relationship of the appellant and herself.

17.1. As noticed, motive,when proved, supplies additional link in the chain of circumstantial evidence but, absence thereof cannot, by itself, be a ground to reject the prosecution case; although absence of motive in a case based on circumstantial evidence is a factor that weighs in favour of the accused.

17.2. The question of motive in the present case, in our view, cannot be examined only with reference to the testimony of the wife of the appellant who has, even while admitting that she left the children in the company of the appellant and thereafter heard only about their demise, chosen not to support the accusations against the appellant. However, her testimony is contradicted by at least three prosecution witnesses

A with two of them, PW-7 Mahender Kumar Yadav and PW-8 Rajender Yadav being her uncles, who maintained that there were strained relations of the appellant and his wife and that the appellant doubted the character of his wife as also the paternity of the children. Even PW-5 Bishan Singh,brother of the appellant, though attempted to depose against the prosecution case but indeed testified to the fact that there had been strains in the relationship of the appellant and his wife. The submission that strained relationship of appellant with his wife may not provide sufficient motive for killing the children cannot be accepted for the reason that the motive projected in the present case had been that the appellant doubted the paternity of the deceased children and suspected that they were not his sons.

17.3. We are clearly of the view that when the evidence on record unambiguously proves the guilt of the accused-appellant, the factor relating to motive cannot displace or weaken the conclusions naturally flowing from the evidence. Moreover, the present case cannot be said to be of want of motive altogether. Differently put, in our view, when all the facts and circumstances are taken together, the present one is not a case where there had been any missing link in the chain of circumstances, leading only to the conclusion of the guilt of the appellant.

18. As noticed, the Trial Court and the High Court have concurrently recorded the findings that the prosecution has been able to establish the chain of circumstances leading to the conclusion that the appellant is guilty of the offence of murder of the victim children, his sons, as also the offence of causing disappearance of evidence. There appears no infirmity in the findings so recorded.

Plea of mental incapacity of the appellant

19. The chain of circumstances against the appellant being complete and strong, learned counsel for the appellant has endeavoured to make out a case of alleged unsoundness of mind of the accused-appellant and has developed a few contentions in that regard that the intent of committing crime cannot be imputed on the appellant looking to his mental instability; and that the entire trial stood vitiated for want of compliance of Section 329 CrPC.

19.1. Sections 84 IPC,86 IPC,329 CrPC and 105 Evidence Act with its illustration (a),carrying relevance in relation to the submissions so made, could be usefully reproduced as under: -

Sections 84 and 86 IPC

"**84. Act of a person of unsound mind**.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

"86. Offence requiring a particular intent or knowledge committed by one who is intoxicated. —In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will."

Section 329 CrPC

"329. Procedure in case of person of unsound mind tried before Court.—(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

[14](1-A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

[14] Inserted by the Code of Criminal Procedure (Amendment) Act, 2008, Act No. 5 of 2009 (w.e.f. 31.12.2009).

A (a) head of psychiatry unit in the nearest government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.

B [15](2) If such Magistrate or Court is informed that the person referred to in sub-section (1-A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of C evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under Section 330:

D

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

E

(3) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with Section 330."

F

Section 105 Evidence Act

"105. Burden of proving that case of accused comes within exceptions.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

G

[15] Substituted by the Code of Criminal Procedure (Amendment) Act, 2008, Act No. 5 of 2009 (w.e.f. 31.12.2009).

H

Illustrations

(a) *A*, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

*** *** **"

20. As noticed, in regard to the mental status of the appellant, two-fold submissions have been made in the present appeal. One concerning his mental incapacity at the time of commission of crime and second, as regards the legality and validity of trial where the investigating agency and the prosecution did not project the factors relating to mental incapacity of the appellant and the Trial Court did not adopt the procedure envisaged by Section 329 CrPC. These submissions are founded on the facts that the appellant was addicted to alcohol and was admitted to the rehabilitation centre for de-addiction. It has also been underscored that the family members of the appellant got him discharged from the rehabilitation centre against advice and without letting him complete the course for rehabilitation to its expected duration. The submissions carry several shortcomings and could only be rejected in the facts of the present case.

21. It remains trite that the burden of proving the existence of circumstances so as to bring the case within the purview of Section 84 IPC lies on the accused in terms of Section 105 of the Evidence Act; and where the accused is charged of murder, the burden to prove that as a result of unsoundness of mind, the accused was incapable of knowing the consequences of his acts is on the defence, as duly exemplified by illustration (a) to the said Section 105 of the Evidence Act. As noticed, the mandate of law is that the Court shall presume absence of the circumstances so as to take the case within any of the General Exceptions in the Indian Penal Code, 1860. The principles of burden of proof in the context of plea of unsoundness of mind had been stated by this Court in the case of ***Dahyabhai Chhaganbhai Thakkar*** (supra) in the following terms: -

"**7.**The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (*1*) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the

A beginning to the end of the trial. (*2*) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a B party to civil proceedings. (*3*) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, C including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

22. As noticed, the prosecution has proved beyond reasonable doubt that the accused has committed the offences of murdering the D children and causing disappearance of evidence. The other surrounding factors also show that prosecution has proved the requisite *mens rea* with reference to the manner of commission of crimes and projecting false narratives by the appellant. In the given set of facts and circumstances, on the submission as made as regards unsoundness of mind, the question in the present case is as to whether the accused- E appellant has been able to establish that he was insane at the time of committing the offence or anything has been projected on record for which even a reasonable doubt could be entertained as regards *mens rea*? The answer to this question, in our view, could only be in the negative.

23. The evidence on record, taken as a whole, at the most shows F that the appellant was addicted to alcohol and was admitted to the rehabilitation centre for de-addiction. However, there is absolutely nothing on record to show that the appellant was medically treated as a person of unsound mind or was legally required to be taken as a person of unsound mind. Contrary to the suggestions made on behalf of the G appellant, the testimony of PW-3 Jagbir, manager of rehabilitation centre, had been clear and specific that during his stay in the centre, no mental illness was observed in the appellant nor was he treated for any mental illness. PW-3 stated in categorical terms that the behaviour of the appellant '*was normal during his said stay and he was never given any medicine for mental illness because neither any mental illness was* H

observed in him nor his family members gave us any previous history of his suffering from any mental illness.' In his cross-examination, this witness further removed any doubt in regard to the mental status of the appellant while maintaining that the appellant '*was mentally fit and sound during his stay at our centre and he was admitted only for de-addiction of his habit of consuming liquor.*'Hence, the appellant's had only been a case of addiction to alcohol. The manager, PW-3, of course, suggested the opinion that the appellant ought to have undergone the course for a period of 7-9 months and that the family members got him discharged against advice but, this statement cannot be read to mean that the appellant was to be treated as a person of unsound mind. In fact, the appellant remained admitted to the rehabilitation centre from 20.11.2008 to 29.04.2009, i.e., for a period of over 5 months and, as noticed above, he was never found suffering from any mental illness so as to be regarded as a person of unsound mind.

24. It is also noticed that the plea of unsoundness of mind and, therefore, the benefit of Section 84 IPC, was never taken in the trial nor any evidence was led in this regard. Significantly, not even a remote suggestion was made to any witness examined for the prosecution about the alleged mental incapacity of the appellant. In his examination under Section 313 CrPC, the response of the appellant to the questions relating to his admission to the rehabilitation centre and the related facts had been that those aspects were '*a matter of record'*. In the given set of facts and circumstances, we are unable to find anything on record for which the benefit of Section 84 IPC could even be remotely extended to the appellant.

25. Similarly, the submissions that when the state of mind/mental condition of appellant was brought on record, the Trial Court ought to have ordered an evaluation to rule out any doubt, remain rather bereft of logic.

25.1. In the relied upon passage in the decision of Gujarat High Court cited on behalf of the appellant in case of ***Manjuben*** (supra), the Court had explained the basics relating to the operation of Section 329 CrPC and its distinction from Section 84 IPC in following terms: -

"43. *** *** ***

23. Section 329 of the Cr.P.C. on the other hand, provides for a procedure in case of a person of unsound mind tried

before the Court. Section makes it clear that in a trial before the Magistrate or Court of Sessions, if the accused appears to be of unsound mind and consequently incapable of making his defence, then the Courts hall, in the first instance, try the fact of such unsoundness of mind and incapacity and if satisfied in this regard, shall record a finding to that effect and shall postpone the further proceedings. This Section is similar to Section 328 of the Cr.P.C. with this-difference that the latter relates to an enquiry before a Magistrate, while this Section relates to the trial before the Magistrate or Court of Sessions. However, both the Sections relate to unsoundness of mind at the time of inquiry or trial that the accused is of unsound mind. A Magistrate cannot act on his own opinion. Hemust have before him a statement of medical officer, who must be examined. Where the Court decides that the accused is of unsound mind and consequently incapable of making his defence, the trial is to be postponed. As provided in Section 330 of the Cr.P.C. such a person may be released on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to anyother person or for his appearance when required before the Magistrate or the Court.The Court or the Magistrate is also entitled to direct the accused to be detained in safe custody in such a place and manner as it may think fit if it is of the view that the bail should not be taken or sufficient security is not given. Section 331 of the Cr.P.C. thereafter talks of resumption of enquiry or trial, when the concerned persons ceases to be of unsound mind. Section 332 of the Cr.P.C. prescribes a procedure to proceed with the trial or enquiry as the case may be.

*** *** ***"

25.1.1. The aforesaid expositions on the scope of the provisions relating to accused person of unsound mind are not of much debate. However, nothing of the aforesaid principles could apply to the present case, for there had been no material on record and no other reason appeared during trial for which, the Trial Court would have been obliged to take recourse of the procedure contemplated by Section 329 CrPC.

25.2. Similarly, the suggestions about defect in trial or failure on the part of the investigating agency to get the appellant examined through

psychiatrist with reference to the decision of the Bombay HC in case of ***Ajay Ram Pandit*** **(supra)** remain too far-stretched. In the said case, it was noticed that the investigating officer became aware of the fact after apprehending the accused that he was mentally unstable and in fact, the people in his locality used to consider him as a mad man. The fact situation of the present case is entirely different.

25.3. In the given set of facts and circumstances, we are not dilating on the other decisions cited by the learned counsel for the appellant for being not relevant for the present purpose. Fact of the matter in the present case remains that there is nothing on record to show that the appellant was a person of unsound mind, whether at the time of commission of crimes or during the course of trial.

26. Apart that there was no fault on the part of the Trial Court or the investigating agency, it is also noteworthy that contrary to even a trace of want of mental capacity of the appellant at the time of commission of the crimes in question, the manner of commission, with strangulation of the children one by one; throwing of their dead bodies into the canal; appellant himself swimming in the canal and coming out; and immediately thereafter, stating before several persons that the children had accidentally slipped into the canal so as to project it as a case of accidental drowning, if at all, show an alert and calculative mind, which had worked with specific intent to cause the death of the children and to cause disappearance of evidence by throwing dead bodies into the canal and thereafter, to mislead by giving a false narrative. By no logic and by no measure of assessment, the appellant, who is found to have carried all the aforesaid misdeeds, could be said to be a person of unsound mind.

27. Thus, we are clearly of the view that the appellant was neither suffering from any medically determined mental illness nor could be said to be a person under a legal disability of unsound mind. Hence, neither Section 84 IPC applies to the present case nor Section 329 CrPC would come to the rescue of the appellant.

28. The suggestions about treatment of the appellant for his abnormal behaviour in jail also does not take his case any further. As noticed, there is nothing on record to find that the appellant was a person of unsound mind at the time of commission of crime or was a person of unsound mind when tried in this case. Post-conviction behaviour is hardly of any relevance so far as present appeal is concerned. In fact, his post-conviction abnormalities, as dealt with in year 2013 i.e., nearly two years after the impugned judgment of the Trial Court, cannot even remotely be

A correlated with the relevant questions arising for the purpose of present appeal. Even in that regard, the report of the Medical Officer (I/C) Central Jail No. 5, Tihar New Delhi dated 22.07.2013 states that the appellant was admitted to psychiatry ward from 07.01.2013 to 04.03.2013 for complaints of abnormal behaviour but, he improved following treatment and at time of issuance of certificate, his general condition was satisfactory; and his mental status examination did not reveal any gross psychopathology.

29. Hence, viewed from any angle, the contention urged on behalf of appellant, as to be given the benefit of the provisions meant for a person of unsound mind, cannot be accepted. The said provisions do not enure to the benefit of the appellant from any standpoint.

30. We may in the passing also observe that in the given set of facts and circumstances, even when the appellant was shown to be a person taken to excessive consumption of alcohol, there is nothing on record to show if he did the offending acts in a state of intoxication so as to give rise to a doubt about intention with reference to the principles underlying Section 86 IPC. We need not elaborate on this aspect for the same having not been projected in evidence at all. In other words, the present one is not a case where intent could be ruled out so as to reduce the offence of murder to that of culpable homicide not amounting to murder. The suggestions about altering the conviction to Section 304 IPC are also required to be rejected.

Conclusion

31. For what has been discussed hereinabove, we are satisfied that there is no infirmity in the findings concurrently recorded by the Trial Court and the High Court that the prosecution case is amply established by cogent and convincing chain of circumstances, pointing only to the guilt of the appellant, who caused the death of victim children, his sons, by strangulation and also caused the evidence of offence to disappear by throwing the dead bodies into the canal. The submissions evolved for the purpose of the present appeal that the appellant be extended the benefit of alleged want of mental capacity also remain baseless and could only be rejected. Therefore, no case for interference is made out.

32. Consequently, this appeal fails and is, therefore, dismissed.

Bibhuti Bhushan Bose Appeal dismissed.
(Assisted by : Vinayak and Keya Rebello, LCRAs)