
Mahtab Vs State of U.P.

Criminal Appeal No. 2895 of 1986

Court: Allahabad High Court

Date of Decision: Feb. 16, 2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 313, 313(1)(b), 342#Evidence Act, 1872 -
Section 106, 114#Penal Code, 1860 (IPC) - Section 300, 302, 304

Citation: (2015) 1 ACR 1159 : (2015) 2 ADJ 624 : (2015) 4 ALJ 505 : (2015) 89 ALLCC 82

Hon'ble Judges: Om Prakash, J.; Amreshwar Pratap Sahi, J.

Bench: Division Bench

Advocate: V.S. Rathore, Gyaneshwar Bhatt, A.K. Shukla and A.K. Srivastava, for the Appellant

Judgement

1. This criminal appeal has been preferred by the appellant Mahtab son of Raghu Lal resident of Khargapur, P.S. Bisalpur, District Pilibhit against

the judgment and order dated 10.9.1986 passed by Sessions Judge, Pilibhit in Sessions Trial No. 125 of 1986 (State v. Mahtab) under Section

302 IPC, P.S. Bisalpur whereby the trial Court has convicted and sentenced the accused- appellant Mahtab under Section 302 IPC for life

imprisonment. The prosecution case in nutshell is that on 31.1.1986, informant Raghu Lal (P.W.1), moved an application before the concerned

police stating therein that he is the resident of village Khargapur, P.S. Bisalpur. In the intervening night of 30/31.1.1986, when the informant's son

had gone to attend the cultural programme at Pradhan's place, his daughter-in-law, who was suffering from fits, had latched the door of the room

from inside and had slept. When his son came back at about 4:00 a.m. and tried to open the door, but the door did not open, then his son broke

the latch of the door with the help of Karchuli and saw that his wife was lying dead on the Galicha. Request was made to take legal action.

2. This information is scribed by one Ram Singh son of Shiv Lal and is Ex. ka-2 and it was entered in the general diary at Rapat No. 26, which is

Ex. Ka-3. The carbon copy of the G.D. entry, which is Ex. Ka-4, is also on record whereby case was converted as Crime No. 36 of 1986 under

Section 302 IPC on the basis of postmortem report. Police has prepared inquest report (Ex. Ka-5) and also the Form No. 13 (Ex-Ka-6), Photo

Lash (Ex. ka-7), letter to R.I. (Ex. Ka-8), letters to C.M.O. (Ex. Ka-9 and 11). The dead body was kept in a sealed cover and sample seal was

also prepared, which is Ex. Ka-10. Postmortem on the dead body of the deceased was done on 1.2.1986 at 2:30 p.m., which is Ex. Ka-13.

Investigating officer has also inspected the spot and prepared site plan, which is Ex. Ka-14. Police recorded the statement of the witnesses and

also collected the evidence and submitted the charge-sheet under Section 302 IPC against the accused-appellant, which is Ex. Ka.-12.

3. The postmortem on the body of the deceased was conducted on 1.2.1986 at 2:30 p.m. and time of death is mentioned as one and a half day

old. Rigor mortis passed off in upper limits and present in lower limits.

Upon postmortem, the following ante-mortem injuries were found :

(i) Contusion at upper lid 2.5 cm. x 1.5 cm. in right side.

(ii) Contusion at right lower lid 2.75 cm. x 1.5 cm. in size.

(iii) Lacerated wound on eye ball right side. It is 3 cm. x 2 cm. x bone deep in size.

(iv) Ligature mark at middle of neck all around. It is 1.5 cm. x all around in length. It is transverse in position (continuous) low down in the neck

below thyroid, base of groove is soft and reddish, ecchymosis and the edges of ligature mark is present. Subcutaneous tissues are ecchymosed

under the mark.

The following postmortem injuries were also found:

(i) Ant bite abrasion on back of left little finger at junction of middle and distal phalanx. It is 1 cm. x.5 cm. in size.

(ii) Ant bite abrasion at left ring finger at joint of distal phalanx on back,.5 cm. x.5 cm.

In the opinion of the doctor, Smt. Raj Beti had died due to asphyxia which was the result of strangulation. According to the doctor, Smt. Raj Beti

could die on the night of 30/31.1.86 at any time.

4. After taking cognizance, case was committed to the Court of Sessions. The trial Court framed charge under Section 302 IPC against the

appellant, which is as follows:

I, P.K. Dixit, Sessions Judge, Pilibhit hereby charge you, Mahtab, as follows:

That you on the night intervening 30/31.1.86 in village Khargapur, within police station Bisalpur, did commit the murder by intentionally, or

knowingly causing the death of your wife, Smt. Raj Beti, and thereby committed an offence punishable under Section 302 I.P.C. and within my

cognizance.

And I hereby direct that you be tried by this Court on the said charge.

Since accused has denied the charge framed against him, therefore, in order to prove the case, the prosecution examined P.W. 1 Raghu Lal, the

father of the accused-appellant Mahtab, P.W.2 Indrajeet Mukhia, P.W.3 Laxmi Narain, P.W.4 Dr. M.L. Sharma, who has conducted the

postmortem, P.W.5 Constable Hem Raj, who has proved the G.D. Entreis and also the inquest report, photo lash, challan lash, letter to R.I. and

C.M.O. Sample seal. This witness has also proved the charge-sheet and the endorsement made on the postmortem report. After completing the

prosecution evidence, Court recored the statement of the accused-appellant under Section 313 Cr.P.C.

5. Accused in the statement under Section 313 Cr.P.C. has stated that he has not committed the present offence by strangulating his wife in the

intervening night of 30/31.1.1986. He had not gone to the house of Indrajeet Mukhiya on the next day of the offence and has not made any extra

judicial confession to him. He had also not made any extra judicial confession to anyone at the time of preparing the inquest report and

postmortem. He has specifically stated that Indrajeet Mukhiya had told him to serve as labour, but he denied. Witness Laxmi Narain has also told

him the same fact, but he was not agree to do work as labour, therefore, due to this enmity, they have made a false statement.

6. Accused has not adduced any oral or documentary evidence in support of his defence.

7. After hearing the parties and going through the record, the learned trial Court vide impugned judgment and order convicted and sentenced the

appellant for the offence under Section 302 IPC for life imprisonment. Hence this Appeal.

8. P.W. 1 Raghu Lal, who is the father of the accused-appellant, has stated that he had informed orally to the local police regarding death of the

deceased. The deceased committed suicide. No one has committed her murder. Accused Mahtab was present in the village at the time of death of

the deceased. There was no issue to the deceased. Hori Lal, his nephew, used to come at his residence. Accused Mahtab suspects that Hori Lal

had illicit relations with the deceased and the child in the womb was of Hori Lal. In the cross-examination, this witness has accepted that when

deceased died, he was outside the house and accused Mahtab had gone to attend Thirthone. Deceased was suffering from fits.

9. P.W.2 Indrajeet Mukhiya has stated that he knows the accused. Information to the police regarding death of the deceased had been given by

the father of the accused. Police had come. Inquest report had been prepared and the dead body was kept in a sealed cover. He had seen the

dead body of the deceased and he was also one of the witnesses of the inquest report. He has seen the injuries on the eyes of the deceased and

blood was also present on the dead body. This witness has proved his signature on the inquest report. He has specifically stated that on the second

day of the incident, accused had come to meet him and had stated that ""Mehtab ne mujhse kaha ki usne anpi biwi ke danda mara jo uski aankh

mein lag gaya jisse wah mar gaye hai. Mahtab ne kaha ki uski biwi ka sambandh Hori se tha."" As per this witness, accused has committed the

murder of his wife in a fit of rage. This witness has also specifically stated that he does not know whether the deceased was pregnant or not. He

has been cross-examined by the defence.

10. P.W.3 Laxmi Narain has stated that he knows the accused Mahtab. Deceased was the wife of accused Mahtab, whose inquest report was

prepared before him. He was also one of the witnesses of the inquest report. This witness has proved his signature on the inquest report. It has

also been stated that on 1.2.1986, in the evening, accused Mahtab had come to meet him. One Siya Ram was also sitting there. Accused Mahtab

has told to this witness that ""Truth has been surfaced from the postmortem report that he has committed murder of his wife"". Accused has also told

to this witness that Hori used to come to his house. He asked from his wife that why he comes to this place. He also restrained his wife. This

witness has also stated that accused has told that when he asked from his wife that why does Hori Lal come then his wife did not say anything and

on this, accused gave 2-3 danda blows to his wife. She received injuries on her eye and fell down on the Galicha. Accused has also told to this

witness that he has strangulated the deceased and has done her to death. The rope used to commit the offence was burnt by him on the chulha.

Accused Mahtab intends his help, but this witness expressed inability to extend any help. This witness has been cross-examined at length by the

defence.

11. P.W.4 Dr. M.L. Sharma, posted as Medical Officer at District Hospital, Pilibhit on the date of performing the postmortem on the dead body

of the deceased, has stated that on 1.2.1986 at about 2:30 p.m., he has conducted the postmortem on the dead body of the deceased, which had

been brought by Constables Arun Singh and Ajay Kumar Pandey in a sealed cover from Police Station Bisalpur. They have also identified the

dead body of the deceased. As per this witness, he has found ante mortem as well as postmortem injuries on the body of the deceased, which has

already been mentioned hereinabove. In the opinion of this witness, deceased died due to asphyxia, which was occasioned due to strangulation

and injury No. 4 is the result of strangulation. Venus was found congested. This witness has proved the postmortem report and has stated that he

has prepared this report after performing the postmortem, which has also been certified by Dr. M.P. Singh, who was present at the time of

postmortem. This witness has opined that death of the deceased might have taken place in the intervening night of 30/31.1.1986 at any time.

Postmortem injuries were the result of ant eating. It has further been opined that the postmortem injuries found on the body of the deceased may

only occur when the dead body of the deceased was lying uncared. Defence has put only one question in the cross-examination as to the nature of

the injuries No. 1, 2 and 3 and this witness stated that injuries No. 1 and 2 were simple, but injury No. 3 was grievous in nature. Triad Court has

also asked question as to whether death was suicidal or homicidal, then this witness has stated that deceased was done to death. It was not a case

of suicide.

12. P.W.5 Constable Hem Raj has stated that on 31.1.1986, he was posted as head moharir at P.S. Bisalpur. On that day at about 15:30 hours,

one Raghu Lal putting his thumb impression submitted a written report scribed by one Ram Singh, the same was entered in the G.D. and was

annexed with the G.D. by this witness. This witness has proved the G.D. prepared by him comparing it with the original G.D. This witness has also

stated that Sub-Inspector Vivek Gautam proceeded to the spot for preparing the inquest report and other police papers. When this witness

received postmortem report on 2.2.1986 at 12:30 p.m., the case was converted into the offence under Section 302 IPC vide G.D. Rapat No. 22

dated 2.2.1986. Ex. Ka-4, the true copy of the G.D. was also proved by this witness comparing it with the original G.D. The papers prepared by

S.I. Vivek Gautam and Badan Singh Tibbetia have also been proved by this witness. He has stated that they were posted with him and he has seen

them writing and signing and also he is aware about the writing and signature of them. As per this witness, inquest report, challan lash, photo lash,

report of R.I., Report of C.M.O., Sample Seal etc. have been prepared by the Sub-Inspector Vivek Gautam in his writing, which are Ex. Ka.-5 to

Ex. Ka.-11 on record. The investigating officer Badan Singh Tibbetia, after completing the investigation, has submitted charge-sheet, which had

also been prepared by him in his writing. Since this witness is aware of the writing and signature of Sri Badan Singh Tibbetia, therefore, he has also

proved the charge-sheet Ex. Ka.-2. Endorsement made on the postmortem report by the CO. K.S. Sharma have also been proved by this

witness, which has been exhibited as Ex. Ka. 13. This witness has not been cross-examined by the defence.

13. Before proceeding to record the arguments advanced by the learned counsel for the parties, we think it proper to reproduce the endorsement

made by Circle Officer on the postmortem report, which has been exhibited as Ex. Ka.-13.

I have seen the ligature mark around the neck of the dead body of Smt. Raj Beti wife of Mahtab resident of Khargapur, P.S. Bisalpur. I agree

with the report of Medical Officer.

14. We have heard Sri A.K. Srivastava and Sri A.K. Shukla, learned counsel for the appellant as well as Sri Pradeep Pandey, learned A.G.A. for

the State and also perused the entire record carefully.

15. It is the submission of the learned counsel for the appellant that deceased was suffering from a disease i.e. fits and due to this reason, in the

intervening night of 30/31.1.1986, she received injuries and resultantly she died. It has also been argued that accused has not made any extra

judicial confession to any person. The prosecution case regarding extra judicial confession is false. Medical evidence does not support the

prosecution case. All the incriminating inculpatory evidence came in the prosecution evidence have not been put before the accused in the

statement under Section 313 Cr.P.C. Therefore, prejudice has been caused and opportunity has not been given to the accused to explain those

incriminating inculpatory evidence. Referring the contents of the First Information Report, it was also submitted that door was closed from inside of

the room, which had been opened breaking the latch by the accused himself. Therefore, all the circumstances clearly show that deceased has

committed suicide and it is not a case of murder. P.W.2 and P.W.3, as has been indicated in the statement under Section 313 Cr.P.C., have

falsely implicated the accused in this case. Accused has never made any extra judicial confession before P.W. 1 and P.W.2. Apart to this, extra

judicial confession is a very weak piece of evidence. Until and unless there is any supporting/corroborating evidence of the extra judicial

confession, no sanctity can be attached to it and conviction cannot be based on such confession, which has been retracted by the accused. First

information report has been lodged by the father of the deceased himself. If accused had committed the murder of the deceased, why he will send

his father to inform the police. It was also argued that accused, who was present there, not only opened the door of the room where the deceased

has committed suicide, but was also present during preparation of inquest report and performing of the postmortem. Mere finding of ligature mark

around the neck, it cannot be presumed that deceased was done to death and she has not committed suicide. Motive is also not proved lay the

prosecution.

16. Reliance has been placed on the law laid down in the following cases :

(1) Nar Singh Vs. State of Haryana, .

(2) Jan Mohammad Vs. State of U.P., .

It was also submitted by the learned counsel for the appellant that the appellant, if found guilty, may be extended the benefit of imprisonment

already undergone as the offence is not covered under Section 302 IPC.

17. Per contra, learned A.G.A. submitted that deceased died in the house of the accused. Death is not natural death. Medical evidence discloses

that deceased was done to death. Trial Court finding that it is not a suicidal death is correct. Although, First Information Report has been lodged

by the father of the accused belatedly, but the real cause of the death of the deceased has been suppressed. Accused has made extra judicial

confession to P.W.1 Raghu Lal and P.W.2 Indrajeet Mukhrya and such extra judicial confession has been made by the accused voluntarily, which

has been rightly relied on by the trial Court. It was also submitted that if the extra judicial confession is voluntarily made by the accused and inspire

confidence, then conviction can be based on such extra judicial confession. It was further submitted that motive shown by the accused in the

statement under Section 313 Cr.P.C. is not believable as no evidence in that respect has been adduced by the accused. Answer made in the

statement under Section 313 Cr.P.C. cannot take place a piece of evidence until and unless it is supported by some corroborative evidence or it is

in the line of the prosecution case. Medical evidence clearly indicates that deceased died due to strangulation. Ligature mark found around the

neck of the deceased clearly goes to show that it is not a case of suicide. Burden to explain the reason of the death of the deceased lies upon the

accused, which has not been explained satisfactorily by the accused. At this stage, learned A.G.A. referred the provisions of Section 106 and 114

of the Indian Evidence Act as also the scope of provision of Section 313 Cr.P.C. and submitted that all the circumstances clearly indicate that

accused and accused only has committed the death of the deceased. Presumption made by the trial Court is in accordance with law, which has not

been rebutted by the accused from his evidence. Since all the incriminating inculpatory evidence have been put to the accused in the statement

under Section 313 Cr.P.C., therefore, no prejudice has been caused to the accused in his defence. The trial Court has rightly held the guilt of the

accused.

18. Learned A.G.A. has placed reliance on the following case laws :

(1) Nishi Kant Jha Vs. The State of Bihar, .

(2) Sahadevan and another Vs. State of Tamil Nadu, .

We have considered the submission raised by the learned counsel for the parties and also gone through the record carefully.

19. In the present matter, as is clear from the prosecution case, the First Information Report is lodged by the father of the accused, who is said to

be present in the village at the time of incident. Offence is said to have been committed in the intervening night of 30/31.1.1986. Information has

been given on 31.1.1986 by the father of the accused only mentioning therein that when his son (the accused) returned back at about 4:00 a.m.

and tried to open the door, which had been closed by the deceased from inside, it was not opened by the deceased, then he broke the door and

found the dead body of the deceased lying on the Galicha.

20. Trial Court on the point of lodging of the First Information Report has opined that information has been given by the informant after deliberation

with the accused. It is also pertinent to mention here that in the present case, no question arises regarding delay in lodging the First Information

Report. It is also undisputed fact that dead body of the deceased was lying inside the house of the accused in a room. This fact is also supported

with the inquest report. Nothing has been found by the Investigating Officer on the spot to show that accused opened the door breaking the latch.

21. Thus, main points for consideration in the case, as has been argued by the learned counsel for the parties, are that:

(1) Whether the death of the deceased is suicidal or homicidal?

(2) What are the scope and effect of extra judicial confession said to have been made by the accused to the witnesses?

(3) Whether the finding arrived at by the trial Court regarding medical evidence is in accordance with law ?

(4) Whether any prejudice has been occasioned to the accused by not placing all the incriminating inculpatory evidence before him?

(5) Whether enmity stated by the appellant is sufficient to falsify the accused in the present matter ?

(6) Whether circumstances have been established by the prosecution to reach on an irresistible conclusion that accused and accused only has

committed the present offence of murder?

(7) Whether accused has explained satisfactorily the reason or cause of death of the deceased?

22. First of all, we are proceeding to decide as to whether the death of the deceased is homicidal or suicidal. Since this point is relating to the

medical evidence, there is no direct evidence of the case, the dead body of the deceased was found inside the house of the accused, therefore,

postmortem report prepared in this case is the most important piece of evidence. P.W. 4 Dr. M.L. Sharma, who has conducted the postmortem

and has prepared the postmortem report, has found two types of injuries on the person of the deceased. Antemortem injuries are in the form of

contusion, lacerated wound and ligature mark. One contusion is in the right side of the upper lid. Second contusion is in right lower lid. Lacerated

wound is on the eye ball right side in the size of 3 cm. x 2 cm. x bone deep. Ligature mark at middle of neck all around into the size of 1.5 cm. x all

around in length.

23. Information was given by P.W.1 Raghu Lal initially does not contain any injury in it. The case has been converted into the offence under

Section 302 IPC after receiving the postmortem report on the basis of ligature mark.

24. P.W.4 Dr. M.L. Sharma has clearly stated that death of the deceased was not a suicidal death, but she had been murdered. This statement by

P.W.4 Dr. M.L. Sharma is only an opinion, therefore, we have compared this opinion with the injuries found on the body of the deceased. Finding

of ligature mark all around the neck clearly indicates that some other person has tighten the neck by using rope or the like article of material, then

and then only death of the deceased took place. P.W.4 has also opined that death of the deceased was the result of asphyxia due to strangulation.

The opinion expressed by Dr. Sharma is based on the basis of injuries found on the body of the deceased. Trial Court has taken into consideration

the opinion of P.W.4 and has rightly concluded that deceased has been murdered, thus the points No. 1 and 3 are answered as above.

25. Now the Court proceed to decide as to whether the extra judicial confession, said to have been made by the accused to the witnesses, is

reliable and inspire confidence. Trial Court has placed reliance on the extra judicial confession made by the accused to P.W.2 Indrajeet Mukhiya

and P.W.3 Laxmi Narain. One argument has been raised on behalf of the appellant that the accused has not made any extra judicial confession to

the above-named witnesses and they have deposed before the Court this fact due to enmity and also on the advise of the police.

On close scrutiny of the evidence regarding enmity, it is evident that accused has stated that he was told by these two witnesses to serve as labour

with them, but he denied, therefore, they have made false statement before the Court. The enmity shown by the accused person is not of such

nature, which may be taken for false implication of the accused. This is a case in which the deceased is done to death, therefore the enmity shown

by the accused for his false implication has rightly not been found sufficient by the trial Court.

26. As regards the acceptance of extra judicial confession made by the accused person is concerned, Hon"ble Supreme Court in the case of Nishi

Kant Jha (supra) has propounded the theory of exculpatory and inculpatory part before relying on such extra judicial confession.

27. Hon"ble Supreme Court in its latest pronouncement in the case of Sahadevan (supra) at paragraph No. 16 has propounded the principal to

rely upon an extra judicial confession alleged to have been made by the accused, which are quoted as under.

16. Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an

extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the

judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been

made by the accused.

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the Court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further

corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.

28. In the instant case, accused had gone to the house of the witness Indrajeet Mukhiya and has disclosed the fact voluntarily. Defence has also

not been able to show that such confession made by the accused have come out due to any pressure or for any other reason. Similarly, accused

has also confessed the guilt to the witness Laxmi Narain during postmortem saying that he has committed murder of his wife. By that time he was

also not under any pressure. It might be possible that the extra judicial confession has been made by the accused in remorse. Witnesses have not

been found inimical at any score by the trial Court and the extra judicial confession, said to have been made, has been made voluntarily and the

circumstance also goes to show that it does not suffer from any material discrepancies and inherent improbabilities and is truthful. At this stage, it is

also pertinent to mention here that the theory narrated in the First Information Report and the plea taken by the accused in the statement under

Section 313 Cr.P.C. have not been found true by the trial Court. On close analysis of the entire evidence, we are also of the view that the plea

taken by the accused in the statement under Section 313 Cr.P.C. and suggestions made to the witnesses regarding enmity or the narration made in

the First Information Report are not true as no evidence regarding breaking of latch was found by the investigating officer. Deceased died due to

asphyxia as a result of strangulation. The ligature marks all around the neck have also been found, therefore, in the facts and circumstances of the

case and taking into consideration the nature of the extra judicial confession made by the accused before the witnesses, the trial Court's view

regarding placing of reliance on the extra judicial confession is not interferable. Merely, on the basis that during course of trial, accused has

retracted from the said confession, it cannot be held that the said extra judicial confession has not been made by him. Thus the point Nos. 2 and 4

are answered as such that extra judicial confession made by the accused has been made voluntarily and the enmity shown is not believable in the

matter. Extra judicial confession is supported by other circumstances and also corroborated by the medical evidence and it does not suffer from

any material discrepancies and inherent improbabilities.

29. Now we proceed to discuss the point No. 4 regarding placing/putting of all incriminating inculpatory evidence before the accused in the

statement under Section 313 Cr.P.C. and its scope.

Trial Court after completing the prosecution evidence has framed seven questions in the statement under Section 313 Cr.P.C. Trial Court has

clearly placed the evidence before the accused to explain that in the postmortem report, ante mortem injuries have been found on the dead body of

the deceased and it is also found that deceased was done to death by strangulation in the intervening night of 30/31.1.1986. Accused has denied

this fact. The extra judicial confession said to have been made by the accused to the witnesses namely Indrajeet Mukhiya and Laxmi Narain have

also been placed before the accused. Accused has also been given opportunity to explain the cause of death of the deceased. No explanation has

been given by the accused although he has denied the incriminating inculpatory evidence placed before him.

30. Hon"ble Supreme Court in the case of Nar Singh (supra) discussing the scope of Section 313 Cr.P.C. in the following paragraphs has held as

under :

11. The object of Section 313(1)(b) Cr.P.C. is to bring the substance of accusation to the accused to enable the accused to explain each and

every circumstance appearing in the evidence against him. The provisions of this section are mandatory and cast a duty on the Court to afford an

opportunity to the accused to explain each and every circumstance and incriminating evidence against him. The examination of accused under

Section 313(1)(b) Cr.P.C. is not a mere formality. Section 313 Cr.P.C. prescribes a procedural safeguard for an accused, giving him an

opportunity to explain the facts and circumstances appearing against him in the evidence and this opportunity is valuable from the stand point of the

accused. The real importance of Section 313 Cr.P.C. lies in that, it imposes a duty on the Court to question the accused properly and fairly so as

to bring home to him the exact case he will have to meet and thereby, an opportunity is given to him to explain any such point.

16. Undoubtedly, the importance of a statement under Section 313 Cr.P.C., insofar as the accused is concerned, can hardly be minimised. The

statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being put against him so

that he can give a proper explanation to meet that case. If an objection as to Section 313 Cr.P.C. statement is taken at the earliest stage, the Court

can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective

Section 313 Cr.P.C. statement is raised in the appellate Court, then difficulty arises for the prosecution as well as the accused. When the trial

Court is required to act in accordance with the mandatory provisions of Section 313 Cr.P.C., failure on the part of the trial Court to comply with

the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the Court to question the

accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the

accused. Insofar as non-compliance of mandatory provisions of Section 313 Cr.P.C., it is an error essentially committed by the learned Sessions

Judge. Since justice suffers in the hands of the Court, the same has to be corrected or rectified in the appeal.

17. So far as Section 313 Cr.P.C. is concerned, undoubtedly, the attention of the accused must specifically be brought to inculcable pieces of

evidence to give him an opportunity to offer an explanation, if he chooses to do so. A three-Judge Bench of this Court in Wasim Khan Vs. The

State of Uttar Pradesh, ; and Bhoor Singh and Another Vs. State of Punjab, , held that every error or omission in compliance of the provisions of

Section 342 of the old Cr.P.C. does not necessarily vitiate trial. The accused must show that some prejudice has been caused or was likely to

have been caused to him.

18. Observing that omission to put any material circumstance to the accused does not ipso facto vitiate the trial and that the accused must show

prejudice and that miscarriage of justice had been sustained by him, this Court in Santosh Kumar Singh Vs. State thr. CBI, , has held as under: ""...

the facts of each case have to be examined but the broad principle is that all incriminating material circumstances must be put to an accused while

recording his statement under Section 313 of the Code, but if any material circumstance has been left out that would not ipso facto result in the

exclusion of that evidence from consideration unless it could further be shown by the accused that prejudice and miscarriage of justice had been

sustained by him...

19. In *Paramjeet Singh alias Pamma v. State of Uttarakhand* (supra), this Court has held as under : Thus, it is evident from the above that the

provisions of Section 313 Cr.P.C. make it obligatory for the Court to question the accused on the evidence and circumstances against him so as to

offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or

examined on a particular circumstance, instead, he must show that such non-examination has actually and materially prejudiced him and has

resulted in the failure of justice. In other words, in the event of any inadvertent omission on the part of the Court to question the accused on an

incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the

omission of the Court.

20. The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance of Section

313 Cr.P.C. has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under Section 313

Cr.P.C., it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the

prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that accused has suffered some disability or

detriment in relation to the safeguard given to him under Section 313 Cr.P.C. Such prejudice should also demonstrate that it has occasioned failure

of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the

case, such prejudice may be implicit and the Court may draw an inference of such prejudice. Facts of each case have to be examined to determine

whether actually any prejudice has been caused to the appellant due to omission of some incriminating circumstances being put to the accused.

21. We may refer to few judgments of this Court where this Court has held that omission to put the question under Section 313 Cr.P.C. has

caused prejudice to the accused vitiating the conviction. In *State of Punjab Vs. Hari Singh and Others*, , question regarding conscious possession

of narcotics was not put to the accused when he was examined under Section 313 Cr.P.C. Finding that question relating to conscious possession

of contraband was not put to the accused, this Court held that the effect of such omission vitally affected the prosecution case and this Court

affirmed the acquittal. In *Kuldip Singh Vs. State of Delhi*, , this Court held that when important incriminating circumstance was not put to the

accused during his examination under Section 313 Cr.P.C., prosecution cannot place reliance on the said piece of evidence.

22. We may also refer to other set of decisions where in the facts and circumstances of the case, this Court held that no prejudice or miscarriage of

justice has been occasioned to the accused. In Santosh Kumar Singh v. State thr. CBI (supra), it was held that on the core issues pertaining to the

helmet and the ligature marks on the neck which were put to the doctor, the defence counsel had raised comprehensive arguments before the trial

Court and also before the High Court and the defence was, therefore, alive to the circumstances against the appellant and that no prejudice or

miscarriage of justice had been occasioned. In Alister Anthony Pareira Vs. State of Maharashtra, , in the facts and circumstances, it was held that

by not putting to the appellant expressly the chemical analyser"s report and the evidence of the doctor, no prejudice can be said to have been

caused to the appellant and he had full opportunity to say what he wanted to say with regard to the prosecution evidence and that the High Court

rightly rejected the contention of the appellant-accused in that regard.

23. When such objection as to omission to put the question under Section 313 Cr.P.C. is raised by the accused in the appellate Court and

prejudice is also shown to have been caused to the accused, then what are the courses available to the appellate Court? The appellate Court may

examine the convict or call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established

against him but not put to him under Section 313 Cr.P.C. and the said answer can be taken into consideration.

24. In Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, , this Court considered the fallout of the omission to put a question to the

accused on vital circumstance appearing against him and this Court has held that the appellate Court can question the counsel for the accused as

regards the circumstance omitted to be put to the accused and in para 16 it was held as under : ""... It is trite law, nevertheless fundamental, that the

prisoner"s attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and

failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed.

However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be

established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from

consideration.

It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the

circumstances established against him but not put to him and if the accused is unable to offer the appellate Court any plausible or reasonable

explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the

proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had

relied for its conviction.

In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, Cr.P.C.,

the omission has not been shown to have caused prejudice to the accused...

31. On close analysis of the evidence and the questions framed by the trial Court in the statement under Section 313 Cr.P.C., it clearly indicates

that all the incriminating inculpatory evidence have been placed before the accused and opportunity to explain the real cause of death has also been

given to the accused which has not been explained by the accused truthfully. There is no omission on part of the trial Court. Therefore, in the facts

and circumstances of the case, it cannot be said that right of the accused to defend himself for the reason mentioned above has been prejudiced.

Trial Court has followed correct legal procedure. Sufficient opportunity has been offered through the questions put to accused to explain the real

cause of murder as the deceased is done to death in his house. Ligature mark clearly goes to show that deceased died due to strangulation. Since

the dead body of the deceased was found in the house of the accused and deceased is the wife of accused, who was present in the house, medical

evidence clearly establishes that deceased has been murdered, therefore, all the circumstances laid by the prosecution before the Court for raising

presumption under Section 114 of the Indian Evidence Act taking recourse of the provisions of Section 106 of the Indian Evidence Act have

arisen. Trial Court has rightly held that it was the accused who has committed the murder of his wife and this presumption has not been rebutted by

the accused by adducing any evidence. Thus, point No. 4 and 6 are answered as above.

32. Learned counsel for the appellant has also argued that charge against the accused only covered under Section 304 Part-1 IPC, therefore,

converting the offence said to be proved under Section 302 IPC into the offence under Section 304 IPC, accused be enlarged on already

undergone by the appellant in jail. To decide this fact, we have also taken into consideration the facts and circumstances and the evidence available

on record. Accused has been charged under Section 302 IPC. There is clear medical evidence that she was done to death. Accused has not given

any explanation as to how deceased died. Accused has also not taken any plea in the trial Court that due to motive assigned in the First

Information Report about illicit relationship of the deceased with one Hori Lal, he was deprived of power of self-control, therefore, he has

committed the present offence. Since there is no such type of plea and facts and circumstances of the case also does not warrant to hold any

presumption in favour of the accused, therefore, arguments advanced by the learned counsel for the appellant is not acceptable. We are of the

considered view that the present case clearly covered under Section 302 IPC, but not under any exception of the Section 300 IPC. Thus, on the

basis of foregoing discussions, we are of the view that trial Court has rightly held guilty to the appellant under Section 302 IPC and sentenced him

for life imprisonment, which is the minimum sentence. So far as the inconsistency and contradiction are concerned, there is no such type of

inconsistency or contradiction which affects the prosecution case or creates doubt on the material point. There is no infirmity, perversity or illegality

in the finding arrived at by the trial Court and no interference is required by this Court.

Thus, in view of the above, we do not find any substance in the contentions raised by learned counsel for the appellant. The Appeal is devoid of

merit and is liable to be dismissed and is, accordingly dismissed. Impugned judgment and order dated 10.9.1986 passed by the trial Court is

hereby confirmed. Since the accused-appellant is in jail, let a copy of this judgment and order be sent immediately to the concerned Court to take

necessary action.