

Reserved On : 02/09/2026
Pronounced On : 14/10/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1414 of 2018
With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
3 of 2026
In R/CRIMINAL APPEAL NO. 1414 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

and

HONOURABLE MR.JUSTICE L. S. PIRZADA

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Approved for Reporting	Yes	No
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SHAHINAHMED FAKIRMOHAMMAD PATHAN
Versus
STATE OF GUJARAT

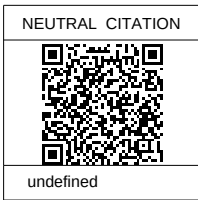
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Appearance:
MR IH SYED, SENIOR ADVOCATE assisted by MR AMAAN SYED(14385)
for the Appellant(s) No. 1
MR LB DABHI, APP for the Opponent(s)/Respondent(s) No. 1
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CORAM: HONOURABLE MS. JUSTICE GITA GOPI
and
HONOURABLE MR.JUSTICE L. S. PIRZADA

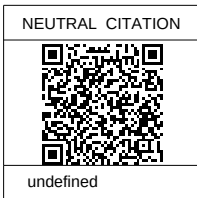
CAV JUDGMENT
(PER : HONOURABLE MS. JUSTICE GITA GOPI)

1. Challenge in this appeal is to the judgment and order of conviction and sentence dated 30.7.2018 passed by the learned 2nd Additional Sessions Judge, Nadiad in Sessions



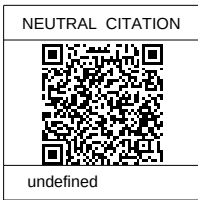
Case no.34 of 2018 by the appellant as sole accused. The sentence under Section 302 of the Indian Penal Code, 1860 (IPC) for life imprisonment was awarded with a fine of Rs.6,000/-, in default of payment of fine, two months simple imprisonment, for the offence punishable under Section 201 of the IPC, seven years rigorous imprisonment with fine of Rs.2,000/- with a default stipulation in case of non-payment of fine, to undergo one month simple imprisonment and for the offence punishable under Section 203 of the IPC, two years rigorous imprisonment and fine of Rs.200/-, in failure of payment of fine, two days simple imprisonment were imposed.

2. Facts of the case relates to incident on 9.1.2018, when the complainant-Ajayabsingh Nirmalsingh Gill was on his duty, he received a phone call from his friend-Sahil Fakirmohammad Pathan (accused) at around 4.15 p.m. who insisted to immediately return back home. When the complainant reached home, he found his wife lying on bed and Sahil Pathan was present there. They took



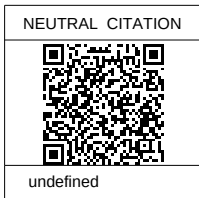
Kulwindar Kaur for medical treatment. On examining, the doctor declared complainant's wife dead. Upon inquiring with Sahil Pathan, the complainant was informed that he had seen his wife hanging from the fan. The death was registered as Accident Case no.1 of 2018, and after postmortem, complaint was given on 11.1.2018.

3. Mr. I.H. Syed, learned Senior Advocate assisted by Mr. Amaan Syed, learned advocate for the appellant has taken this Court through the evidence on record, the depositions of the witnesses, the testimony of the doctor as well as all relevant documentary evidence and submitted that the finding of guilt recorded by the Trial Court is based on erroneous appreciation of the evidence led by the prosecution at the time of trial. It was submitted that the reasons assigned by the Trial Court while convicting the appellant are neither cogent nor sustainable in law. Mr. Syed submitted that the learned Sessions Judge has failed to appreciate that the evidence of the witnesses examined by the prosecution is neither credible nor trustworthy and in any case, is not sufficient to base a conviction for a serious offence of murder

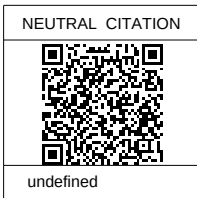


punishable with life imprisonment. Mr. Syed further submitted that the learned Sessions Judge has erred in properly appreciating the evidence of the complainant. The learned Trial Judge has failed to appreciate that the complainant has not mentioned about the commission of any overt or covert act by the appellant in his evidence. The complainant has deposed that the appellant called him on his mobile phone and asked him to urgently return home. According to the learned Senior Advocate, this communication does not connect the appellant with the crime and at the highest, establishes his presence at the place of incident on or around the time of the incident. Mr. Syed thus submitted that such circumstance, by itself, cannot be sufficient to convict the appellant for the heinous crime in question.

3.1 Learned Senior Advocate Mr. Syed submitted that the learned Sessions Judge has erred in relying upon the evidence of PW9, Kirtiben Ahuja, and her husband PW10, Gautam Ahuja to corroborate the evidence of last seen. Mr. Syed further submitted that neither of these two

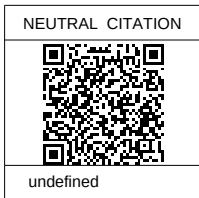


witnesses has deposed about having seen the appellant entering the house or exiting the house of the deceased. All that is stated by both these witnesses, even if their evidence is believed in its entirety, is that the appellant was seen entering the society wherein the deceased was residing. Beyond that, both these witnesses do not speak about any circumstance connecting the appellant with the crime. Mr. Syed also submitted that the learned Judge has completely overlooked the fact that PW9 speaks about receiving a call from Indrajeet Rathod at around 5.00 p.m. on the date of the incident informing her that the deceased had committed suicide by hanging. Mr. Syed further submitted that Indrajeet Rathod has not been examined by the prosecution and therefore, it is not known as to how Indrajeet Rathod came to know about the fateful incident. According to the learned Senior Advocate, neither the appellant had called Indrajeet Rathod nor had the complainant called him and therefore, it remains mysterious as to how Indrajeet Rathod came to know about the alleged commission of suicide by the deceased.



3.2 Learned Senior Advocate Mr. Syed submitted that the learned Sessions Judge has erred in not appreciating that Indrajeet Rathod had informed PW9, thereby suggesting that he had acquired knowledge of the incident. None of the witnesses examined by the prosecution speaks about or mentions having called Indrajeet Rathod and informing him about the incident. The absence of such positive evidence, according to the learned Senior Advocate, casts a serious doubt on the prosecution theory that the appellant alone was in the company of the deceased shortly prior to her death and had committed the murder of the deceased.

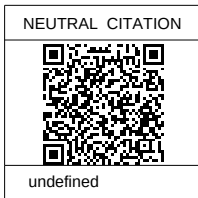
3.3 Learned Senior Advocate Mr. Syed submitted that the learned Sessions Judge has committed a gross error of law in accepting the theory of last seen by relying upon the evidence of PW1, PW9 and PW10. Without prejudice to the contention, it was submitted that the evidence of last seen, by itself, cannot discharge the burden resting upon the prosecution to establish the guilt of the accused beyond reasonable doubt and such evidence requires



corroboration, which in the present case, is glaringly absent.

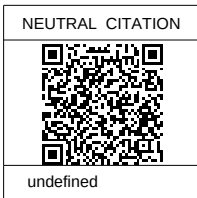
3.4 Learned Senior Advocate also submitted that the learned Judge has gravely erred in not appreciating the settled position of law that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and that the circumstances so proved must form a complete chain of events from which the only irresistible conclusion about the guilt of the accused can safely be drawn, leaving no other hypothesis consistent with the innocence of the accused. Mr. Syed further submitted that the learned Judge has overlooked the vital aspect that in a case largely depending upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof, which according to the learned Senior Advocate, has occurred in the present case.

3.5 Learned Senior Advocate Mr. Syed submitted that the learned Judge has erred in not satisfying himself that the various circumstances forming the chain of events must



be such as to rule out a reasonable likelihood of the innocence of the accused. In the present case, according to the learned Senior Advocate, the chain is not complete. The prosecution has not been able to explain as to how Indrajeet Rathod acquired knowledge about the incident in the absence of any evidence on record showing or suggesting that any person privy to such information had shared the news with him. Mr. Syed thus submitted that this missing link snaps the chain of circumstances and that the other circumstances, by themselves, cannot in any manner establish the guilt of the appellant beyond reasonable doubt.

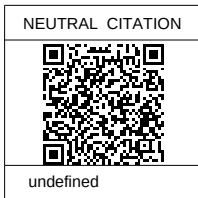
3.6 Mr. Syed, learned Senior Advocate submitted that the learned Judge has failed to appreciate that had the appellant been the culprit, he would surely not have called the complainant and put forward a different version about the circumstances surrounding the death of the deceased. Mr. Syed further submitted that the learned Judge has erred in not appreciating that the scene of offence had been visited by a number of persons



and that it was not untouched when inspected by the police. According to the learned Senior Advocate, such fact casts a serious doubt on the version of the police regarding the preparation of the site panchnama and the recording of the presence of scissors and other incriminating material allegedly still lying in the same condition.

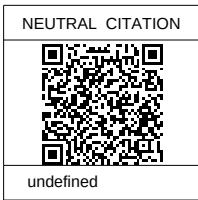
3.7 Mr. Syed submitted that the learned Judge has failed to appreciate the glaring and obvious discrepancies in the inquest panchnama and the postmortem report regarding the nature and location of the injuries found on the body of the deceased. Mr. Syed further submitted that the inquest panchnama records an injury on the left forehead, whereas the postmortem report mentions an incised wound on the right forehead.

3.8 Learned Senior Advocate Mr. Syed further submitted that the learned Judge has failed to notice the irreconcilable discrepancy in the autopsy report. The doctor has mentioned a cut wound on the right forehead, possibly caused by scissors and has also mentioned a superficial



fracture in the temporal region, possibly caused by the fall on the ground. Mr. Syed contended that strangely, there is no mention of any bleeding wound in the inquest panchnama. Further, the complainant who is the husband of the deceased does not mention about any cut injury having been suffered by the deceased when she was being transferred to the hospital. Mr. Syed further submitted that the police have not recovered blood-stained clothes either from the appellant or from the complainant, though both were in close contact with the deceased shortly after the incident when she was being transported to the hospital.

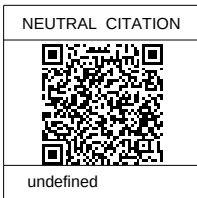
3.9 Learned Senior Advocate Mr. Syed submitted that the learned Sessions Judge has completely overlooked the fact that there is no other evidence produced on record by the prosecution which conclusively establishes all the circumstances and which unerringly points to only one conclusion, namely, the guilt of the appellant. Mr. Syed also submitted that the circumstances sought to be relied upon by the prosecution to connect the appellant with



the alleged crime are highly doubtful and have not been sufficiently and conclusively proved by the prosecution. On such evidence, according to the learned Senior Advocate, the appellant could not have been convicted.

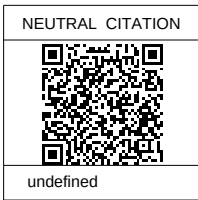
3.10 Mr. Syed further submitted that the entire prosecution case rests upon circumstantial evidence and there is no eye-witness to the incident, no extra-judicial confession and no recovery attributable to the appellant which is supported by an independent panch witness. In this regard, Mr. Syed submitted that PW3, PW4, PW5 and PW6 have all turned hostile and have denied the recovery panchnama Exhibit 21.

3.11 Learned Senior Advocate contended that the prosecution has failed to exclude the alternative hypothesis that the deceased died as a result of hanging. Drawing the attention of the Court to the site panchnama at Exhibit 17 and the scene of offence report of the FSL Scientific Officer at Exhibit 51, it was submitted that both documents record that the parallel plate of the ceiling fan was disturbed and that the ceiling plaster immediately



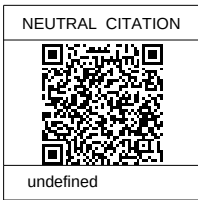
above the fan was also disturbed. According to the learned Senior Advocate, these circumstances are consistent with weight having been borne by the ceiling fan and, therefore, cannot be brushed aside by merely relying upon the presence of routine dust and cobwebs. Mr. Syed also submitted that the learned Trial Court has fastened upon the presence of dust and cobwebs but has failed to deal with the material circumstance regarding the disturbed fan plate and ceiling plaster.

3.12 Mr. Syed, learned Senior Advocate has submitted that the conduct of the appellant is wholly inconsistent with the theory of his guilt. The appellant himself telephoned the husband of the deceased and called him home, remained at the house until the complainant arrived and thereafter carried the deceased on his own motorcycle to the G.E.B. Hospital. According to the learned Senior Advocate, such conduct is wholly inconsistent with the conduct expected of an assailant. Mr. Syed contended that instead of appreciating this conduct as a circumstance creating a doubt in the prosecution case,



the learned Trial Court sought to convert the same into an incriminating circumstance by speculating as to how an ordinary person would have behaved. Such an approach, according to the learned Senior Advocate, is impermissible particularly in a case based wholly upon circumstantial evidence.

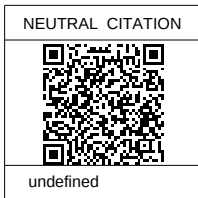
3.13 Learned Senior Advocate Mr. Syed submitted that even the medical evidence does not rule out the possibility of death by hanging. Referring to the postmortem note at Exhibit 40, it was submitted that there is no ligature mark recorded therein and that such mark surfaces for the first time in the deposition of PW16. According to the learned Senior Advocate, this amounts to a material improvement over the contemporaneous medical record and such improvement cannot be permitted to supply what is conspicuously absent from the postmortem report. More importantly, when PW16 himself admitted in cross-examination that such injury could also be caused by hanging. Thus, according to the learned Senior Advocate, the medical evidence of the prosecution does



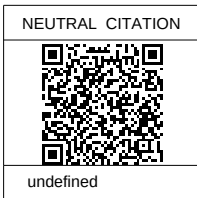
not exclude the hypothesis of hanging and therefore, the prosecution has failed to establish homicidal death beyond reasonable doubt.

3.14 Learned Senior Advocate Mr. Syed placed reliance upon the decision of the Hon'ble Supreme Court in **Vaibhav v. State of Maharashtra**, reported in (2025) 8 SCC 315, and submitted that where the subsequent conduct of the accused is consistent with an alternative non-homicidal theory, where such theory is fairly probable and supported by medical evidence and where two views are reasonably possible, the benefit of the counter-possibility must necessarily go to the accused. Mr. Syed submitted that suspicion, however grave, cannot take the place of legal proof. According to the learned Senior Advocate, the principle laid down in the said decision squarely applies to the facts of the present case.

3.15 Learned Senior Advocate further submitted that the alleged illicit relationship between the appellant and the deceased, which is stated to be the sole motive for the alleged offence, has not been established by any reliable

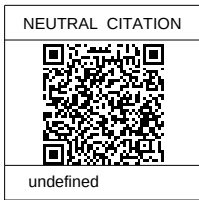


evidence. Not a single witness has deposed about any such relationship between the appellant and the deceased. PW2, Ranvirsinh Raulji, has expressly stated that he had no knowledge of any love affair, whereas PW13, PW14 and PW15 were declared hostile. Mr. Syed further submitted that no letter, photograph, message or chat has been produced on record to establish such relationship. The Investigating Officer has admitted in cross-examination that he did not collect any WhatsApp or message data of the deceased. According to the learned Senior Advocate, the learned Trial Court has proceeded on a circular reasoning by inferring the alleged affair from the supposed quarrel and thereafter relying upon the supposed quarrel to infer the alleged affair. Such reasoning, according to the learned Senior Advocate, cannot constitute proof of motive. Reliance was again placed upon **Vaibhav** (supra), particularly paragraphs 33 to 40, to submit that in a case resting purely upon circumstantial evidence, the complete absence of motive is a relevant circumstance which weighs in favour of the accused.

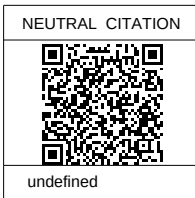


3.16 Mr. Syed, learned Senior Advocate submitted that there is also a material and irreconcilable discrepancy regarding the location of the injury on the forehead of the deceased. It was pointed out that the inquest panchnama at Exhibit 18 records an injury on the left side of the forehead, whereas the postmortem note at Exhibit 40 and the evidence of PW16, Dr. Ketan Mistry, record a contuse wound measuring 2 x 2 cm on the right side of the forehead. Mr. Syed further submitted that the learned Trial Court has sought to dispose of this material discrepancy by observing that it was merely a 'slip of pen'. According to the learned Senior Advocate, however, no prosecution witness has offered any such explanation and it was not open to the Court to supply an explanation on behalf of the prosecution, particularly when the very location of the injury allegedly caused by the weapon is in issue.

3.17 Learned Senior Advocate further submitted that there is an unexplained delay in lodging the complaint and a material improvement in the medical record. It was



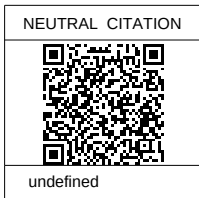
submitted that the incident occurred on 09.01.2018 and Accidental Death No.1 of 2018 was registered on the same day on the statement of the complainant at Exhibit 12. In the said statement, there is no mention whatsoever of any head injury and the incident is stated to have occurred before 4.00 p.m. The FIR at Exhibit 13 came to be registered only on 11.01.2018, after the postmortem examination, which was conducted two days after the incident. The learned Senior Advocate drew the attention of the Court to Column 20 of the postmortem report and submitted that the entry 'NAD' was initially recorded and was thereafter overwritten to mention fracture of the thyroid/hyoid bone, which, according to the prosecution, forms the basis of the theory of strangulation. Mr. Syed further submitted that no ligature mark is recorded in the postmortem note itself and that PW-16 has admitted in cross-examination that the injury on the neck could also occur in a case of hanging and that a Dupatta could cause such a mark. According to the learned Senior Advocate, the said material circumstances create a serious doubt regarding the prosecution theory



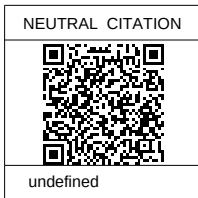
of homicidal death.

3.18 Learned Senior Advocate further submitted that the deceased's minor daughter, aged about 11 years, who was admittedly present in the house at the relevant time, has not been examined by the prosecution. It was pointed out that PW-18 admitted in cross-examination that the minor daughter was present when the statements were recorded, yet no statement of the child was ever recorded. According to the learned Senior Advocate, she was the only person who could have spoken about what had actually occurred inside the house and the prosecution has, without any explanation, withheld the best available witness. Such withholding, according to the learned Senior Advocate, warrants an adverse inference under Section 114(g) of the Indian Evidence Act, 1872.

3.19 Learned Senior Advocate submitted that even the presence of the appellant during the time frame mentioned in the charge has not been established. Mr. Syed further submitted that the charge fixes the relevant

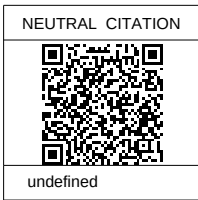


window between 15:30 and 16:00 hours. PW2 has deposed that the appellant had gone to his house to deliver medicine at about 4.00 to 4.15 p.m., and PW18 has admitted that this fact had emerged during the course of investigation. PW9 and PW10 claim only to have seen the appellant walking towards the society at about 3.45 p.m. from a busy crossroads. PW10 has admitted that the society is large and there is heavy public movement. The learned Senior Advocate further submitted that the Investigating Officer admitted that six to seven CCTV cameras were installed on the Sevalia-Thermal road, including at Janta Dairy, Mahakal Dairy, Urban Bank, Parth Medical Store, Naranbhai's weighbridge and the G.S.E.C.L. gate, yet no CCTV footage was collected. Mr. Syed further submitted that even the statement of any person at the medical store which the appellant had visited was not recorded. According to the learned Senior Advocate, the prosecution has thus failed to establish the presence of the appellant at the relevant time and place by cogent evidence.



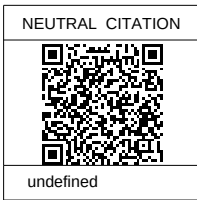
3.20 Learned Senior Advocate also submitted that there is an unexplained delay of more than 42 days in forwarding the muddamal and samples to the FSL. It was submitted that the muddamal was seized between 09.01.2018 and 16.01.2018, whereas the dispatch note is dated 09.02.2018 and the forwarding letter to the FSL is dated 19.02.2018. According to the learned Senior Advocate, no explanation whatsoever has been offered for such substantial delay. It was further submitted that the Investigating Officer admitted that no fingerprints were lifted from the scissors and that no blood sample of the deceased was taken or sent to the FSL. Consequently, according to the learned Senior Advocate, the evidentiary value of the serological comparison is seriously compromised and the chain of custody of the material objects becomes unsafe.

3.21 Learned Senior Advocate lastly submitted that the period of incarceration undergone by the appellant is also a relevant circumstance. It was submitted that the appellant has undergone more than eight years and



seven months of actual incarceration and that the substantive sentences imposed under Sections 201 and 203 of the IPC have already been fully undergone. Mr. Syed further submitted that the appellant was 27 years of age at the time of conviction, has no criminal antecedents and is the sole earning member of a family comprising aged parents.

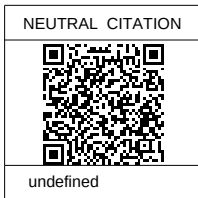
3.22 On the basis of the aforesaid submissions, the learned Senior Advocate has submitted that when the circumstances are considered cumulatively, the prosecution has failed to establish a complete and unbroken chain of circumstances. According to the learned Senior Advocate, the alternative hypothesis of death by hanging has not been excluded, the alleged motive remains wholly unproved; there are material discrepancies in the inquest and postmortem record, there is an unexplained alteration in the postmortem report, the minor daughter, who was present in the house, has not been examined, the CCTV footage which could have established the appellant's presence has not



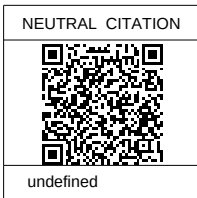
been collected, and there is an unexplained delay of more than 42 days in forwarding the FSL material. Mr. Syed therefore submitted that the chain of circumstances is broken at more than one link and that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The learned Senior Advocate, thus, submitted that the appellant deserves to be given the benefit of the doubt and the conviction recorded by the learned Trial Court deserves to be set aside.

3.23 Learned Senior Advocate Mr. Syed also relied upon the decision in the case of **Taher Vajiyuddin Rangwala & Anr. v. State of Gujarat, 2026 SCC OnLine SC 1576** as well as the decision in the case of **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**.

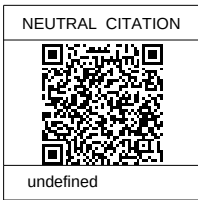
4. Mr. L.B. Dabhi, learned APP has contended that the submissions raised by the learned Senior Advocate Mr. Syed would not be of any assistance to dislodge the observations made by the Trial Court with regard to the circumstances and its evidentiary value for the conviction considering the case as homicidal. The plea of suicide by



the deceased has been deliberately raised by the accused so as to retract the facts, which got disclosed through his own act, and the circumstances with the evidence of all the witnesses prove that it was the accused who had murdered the deceased. The accused had tried to hide the real fact and had misdirected the complainant by impressing upon him to convert the case of murder into suicide. Learned APP has further submitted that the employer of the accused himself has proved the fact that the deceased was at the relevant point of time of the incident away from his job and the other witnesses have corroborated the fact of accused going towards the complainant's house, which itself cannot be denied since the presence of the accused in the house of the complainant is self-proved. Learned APP further submitted that the motive to commit murder has also been proved, though was not required to do so and submitted that the circumstances against the accused completes the total chain, which had been proved during the trial and thus, submitted that the appeal is required to be dismissed.

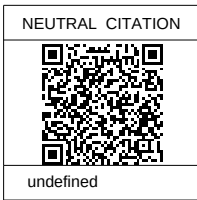


5. Having heard learned Senior Advocate and learned APP, the evidence produced during the trial would require assessment. The complainant as husband of deceased examined as PW1, stated that at the time of incident, he was staying at Timba na Muvada, Vrundavan Society along with his family. His native place was Khokhara, Taluka Siddhpur, District Hoshiyarpur, Punjab.
6. He was working as Supervisor at Sangol Ultratech Company. His wife Kulwinder Kaur was home maker and was also doing sewing work. Out of the wedlock, they had a daughter, aged about 11 years. Father of the deceased wife was Harjinderkaur Balvindersingh Dhilon residing at Kevadiya colony, Punjab.
7. On 9.1.2008, after lunch, he attended his job at 1:45 p.m. At that time, his wife and daughter were at home. As per the evidence of the complainant at 4:15 p.m., the complainant received a phone call from his friend-Sahil Fakirmohammad Pathan (accused) on his mobile phone, who asked the complainant to come expeditiously, when



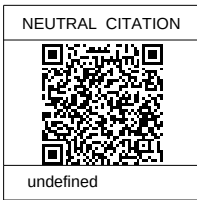
complainant inquired as to what had happened, accused Sahil said that he could not inform him on the phone, and asked the complainant to come home fast. Therefore, the complainant went home, and at that time, he saw his wife on the bed and when he asked Sahil, as to what had happened to his wife, Sahil replied to take his wife immediately to the hospital and thereafter, would tell him.

8. So they took Kulwinder Kaur on a bike to Thermal GEB hospital. They three had gone on the bike driven by the accused. Complainant's wife was in the middle and the then the complainant on the bike. According to the complainant, at that time, his wife was not conscious. The doctor, after examining his wife, declared her dead. It was that time, the complainant asked Sahil Pathan, who told the complainant that his wife was hanging from ceiling fan and he had brought her down, so the complainant informed his brother-in-law residing at Surat.
9. Thereafter, the dead body of his wife was brought to

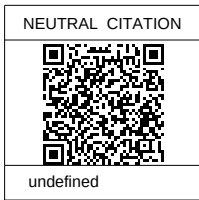


Sevaliya Government hospital, and the complainant went to Shevaliya Police Station to give the information produced at Exh.12.

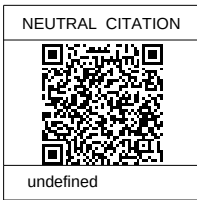
10. The postmortem of his wife was conducted at Shevaliya hospital and the panel doctor after the postmortem told that the death was either because of head injury or by strangulation of the neck, so he gave a complaint against accused on 11.1.2018.
11. The further evidence of the complainant recorded refers that on the day of the incident, when he had started from home for his job, his wife had come to see him out. He had called his wife on the mobile phone from his job but she had not lifted the call and thereafter, he had received the call of the accused. The complaint given on 11.1.2018 at Shevaliya Police Station was produced in evidence at Exh.13. During the course of the inquest Panchnama, the complainant had identified his wife's dead body. The receipt issued for receiving the dead body was put in evidence at Exh.14.



12. In the cross-examination, it had been elicited that at the time of incident, his daughter was studying in Standard Sixth. The complainant affirmed that he had good relation with the accused, and accused was visiting his house. On the date of the incident at about 1.30 in the afternoon, the complainant had lunch. His job was at 2.00 p.m. He received a call from the accused at around 4.20 p.m.
13. While the deceased was taken to the hospital, in between them on the Honda, she was sitting. Initially, they took her at Krishna hospital. The doctor was present there. The doctor had not inquired anything from him, nor had he told anything to the doctor.
14. At GEB hospital, they met the doctor. The hospital was at a distance of two to two and a half kilometer from the place of incident. At that hospital, seven to eight persons working with him had come there. The police too had come to the hospital. On that day, no complaint was taken. Police Shri Chaudhary had inquired from him for about ten minutes.



15. In Exh.12 declaration, he had not alleged of neck strangulation. On 10.1.2018, he had not gone to the police station, while had gone to Shevaliya hospital at 8:00 to 9:00 in the morning. The dead body after the postmortem was given on 10.1.2018 at 3.00 p.m. in the afternoon. The complainant does not remember whether the Panchnama on 10.1.2018 was drawn in his presence.
16. The complainant stated that when he had picked his wife to make her sit on the motorcycle, his clothes did not get stained with blood. The complainant affirmed that when he had given the declaration Exh.12, he had not got it recorded therein that his wife was injured at the head.
17. In background of the evidence of the complaint, the statement of the accused recorded in the Court becomes necessary to be examined as accused is duty bound to explain incriminating material against him.
18. The accused had in his further statement under Section 313 of the Cr.P.C. stated that deceased was a Sardar woman and he had good relation with her husband and a

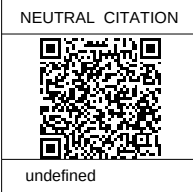


false impression has been created by certain political factor under the influence of Hindu Sangathan, and Advocate Ketan P. Patel by suppressing true facts, prepared false FIR and by bringing the police under pressure, a totally false investigation had been done, and to put the accused behind jail, false case has been lodged. The accused has brought communal colour in his defence.

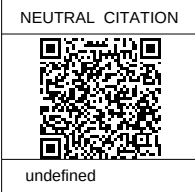
19. Accused had raised a plea that the deceased died by hanging herself and the prosecution case is that the accused strangled the deceased. The challenge is also given to the observation made by the doctor in the postmortem report.

20. In the case of **Javed Abdul Rajjaq Shaikh v. State of Maharashtra, (2019) 10 SCC 778**, Paragraph 22 records the difference between hanging and strangulation referring to Modi's book on the subject, which reads as under:-

"22. The differences between hanging and strangulation have been highlighted by *Modi on Medical Jurisprudence and Toxicology*, 25th Edn., as follows:-

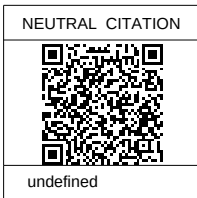


<i>Hanging</i>		<i>Strangulation</i>	
1.	Most suicidal.	1.	Mostly homicidal.
2.	Face—Usual pale and petechiae rare.	2.	Face—Congested, livid and marked with petechiae.
3.	Saliva—Dribbling out of mouth down on the chin and chest.	3.	Saliva—No such dribbling.
4.	Neck—Stretched and elongated in fresh bodies.	4.	Neck—Not so.
5.	External signs of asphyxia usually not well marked.	5.	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).
6.	Ligature mark—Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	6.	Ligature mark—Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.
7.	Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7.	Abrasions and ecchymoses round about the edges of the ligature mark, common.
8.	Subcutaneous	8.	Subcutaneous



	tissues Under the mark—White, hard and glistening.		tissues under the mark—Ecchymosed.
9.	Injury to the muscles of neck—Rare.	9.	Injury to the muscles of the neck—Common.
10	Carotid arteries, internal coats ruptured in	10	Carotid arteries, internal coats ordinarily ruptured.
11	Fracture of the larynx and trachea—Very rare and may be found that too in judicial hanging.	11	Fracture of the larynx, trachea and hyoid bone.
12	Fracture—dislocation of the cervical vertebrae—Common in judicial hanging.	12	Fracture—dislocation of the the cervical vertebrae—Rare.
13	Scratches, abrasions and bruises on the face, neck and other parts of the body—Usually not present.	13	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body—Usually present.
14	No evidence of sexual assault.	14	No evidence of sexual assault.
15	Emphysematous bullae on surface of the lungs—Not present.	15	Emphysematous bullae on the surface of the lungs — May be present.

23. As to what is the distinction between



strangulation and throttling is also dealt within the selfsame work:

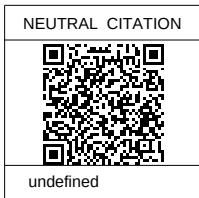
"*Definition.*—Strangulation is defined as the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation.

Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body.

When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold).

A form of strangulation, known as *bansdola*, is sometimes practised in northern India. In this form, a strong bamboo or *lathi* (wooden club) is placed across the throat and another across the back of the neck. These are strongly fastened at one end. A rope is passed round the other end, which is bound together, and the unfortunate victim is squeezed to death. The throat is also pressed by placing a *lathi* or bamboo across the front of the neck and standing with a foot on each end of *lathi* or bamboo.

Garrotting is another method that was used by thugs around 1862 in India. ... A rope or a loin cloth is suddenly thrown over the head and quickly tightened around the neck. Due to sudden loss of consciousness, there is no struggle. The assailant is then able to tie the ligature."



21. So the case of the defence side would be of suicidal hanging, while prosecution case is of homicidal strangulation. In the text book of Medical Jurisprudence and Toxicology, Modi's 27th Edition by K. Kannan of LexisNexis on page 595, the literature with regard to difference between suicidal strangulation, homicidal strangulation and accidental strangulation has been recorded as under:-

"20.3.6.2 Whether the Strangulation was Suicidal, Homicidal or Accidental

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

It is not possible for anyone to continue a firm grasp of the throat after unconsciousness supervenes, hence throttling by the fingers cannot possibly be



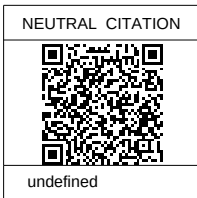
suicidal.

Homicidal strangulation is the commonest of the three forms. Usually, there is a single turn of a ligature round the neck with one or more knots. Sometimes there may be more turns, in which case more ligature marks will be found on the neck. In addition to the ligature marks or finger marks, there is a probability of evidence of a struggle, marks of violence on the other parts of the body, and evidence of sexual interference in females. Cases of "palmar strangulation" by forcibly closing the throat by both palms held at right angle over each other, are also reported.

A person may be first rendered helpless by being bound or rendered unconscious by blows on the head or by intoxicating drugs, and then strangled by a small amount of compression. In some, strangulation and suffocation by closure of the mouth and nostrils may both be attempted. Strangulation by ligature is sometimes resorted to in the crime of infanticide.

Sometimes, a ligature is passed round the neck and over the body, and then tied to the hands and feet to simulate suicidal strangulation. In such cases, the manner of tying should be examined carefully to see if it could have been done by a suicide. A ligature is occasionally placed round the neck after throttling to simulate suicide, but on removal of the ligature, finger marks on the throat accompanied by injuries to the deeper structures will be visible, thus suggesting murder.

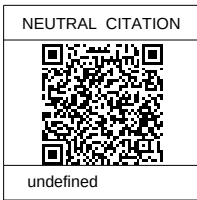
Lastly, it must be borne in mind that



strangulation may be committed without any noise or disturbance even if other persons are in close vicinity, they may not be aware of the act. This may happen in garrotting, where a victim is suddenly overpowered from behind, by tying a rope, a dhoti or the hands.”

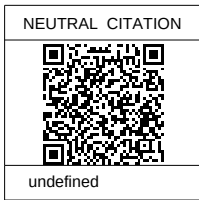
22. Garrotting as referred in the judgment of Javed Abdul Rajjaq Shaikh (supra) is a form of strangulation, which is committed without any noise or disturbance. People in the vicinity may not be aware of the act. Strangulation by way of garrotting by suddenly overpowering the victim from behind are possible by using a rope, Dhoti or the hands. Here in the present matter, the case of the prosecution against the accused as per the charge framed is of hitting deceased Kulwinder Kaur on the forehead with the scissors and compressing her throat to death. The complainant gave the FIR against the accused after the postmortem, when the doctor informed the complainant that his wife was put to death.

23. Dr. Ketan Mahendrabhai Mistri, Medical Officer of CHC Kapadwanj was examined as PW16. As per his testimony, on 10.1.2018, when he was on his duty, at that time, ASI



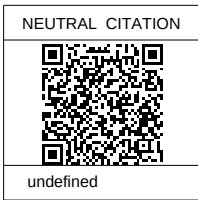
Sodha of Thermal OP had brought the dead body of Kulwinder Kaur, resident of Galteshwar with an inquest panchnama and the dead body was accepted at 12-30 p.m. the postmortem was conducted by the panel doctor. Along with Dr. Ketan Mistri, Dr. Ujala from PHC Ness had conducted the postmortem from 12:35 to 2:35 p.m. The dead body of 32 years female was recorded, the clothes worn by the deceased were referred in the testimony, and when noticed, there was rigor mortis in the whole body and P.M. lividity was fully developed, eyes were partially open, mouth was close. Examining the external part of the body, on the right side of the forehead, a deep contuse wound of 2 x 2 cm length was noticed, the injury was antemortem.

24. The internal examination of the dead body noticed contusion and bruises on the right side of the forehead and on the temporal region on right side, there was one superficial fracture. The brain was pale and congested.
25. Examining the larynx, trachea and bronchi, cords were found to be displaced and fractured and along with that,



there was rupture in cricoid cartilage and tracheal rings.

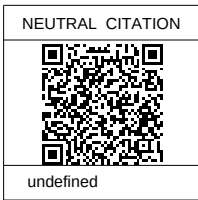
26. The cause of death as per the postmortem report is neurogenic shock associated with head injury and cardio respiratory arrest due to blockage of upper airway by external pressure.
27. The doctor stated that there was head injury on the right side of the body and there was ligature mark on the neck. The doctor further clarified that on consideration of the dead body, if the person commits suicide by hanging, there would be lump in the neck and there would not be any ligature mark, while in the present case, there was a continuous ligature mark and if the case is of hanging, then, such marks would be on the upper part of the neck, while in the present case, instead of "V" shape, there was continuous circle mark at the lower part of the neck.
28. The doctor stated that in case of hanging, the tongue would be out and there would be drooling of saliva from the mouth. The injury found on the forehead as per the doctor could occur with the scissor used in tailoring and



the ligature mark on the neck could occur by thing like 'Dupatta'. The doctor put in evidence the postmortem note at Exh.40, identifying the signature and stated that the injury which was found during the postmortem could occur because of strangulation owing to the use of external force and the death was not because of hanging.

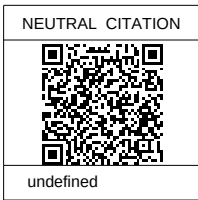
29. The opinion of the doctor was that some external force was used to strangle the deceased, thus, accordingly, it was a case of homicidal strangulation and not suicidal hanging. Strangulation is defined as the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation.

30. Initially, Exh.12 was given making a report of suicidal death. On 10.1.2018, PW18 Jayprakash Laxmanbhai Chauhan PSI of Thasra Police Station was having additional charge of Sevaliya Police Station. He received an accidental death no.1/18 for registration, postmortem report was received, inquest panchnama was drawn on 10.1.2018 before the Executive Magistrate, the report under Section 174 Cr.P.C. was received from ASI H.P.



Sodha of Sevaliya Police Station as well death report form as received from H.P. Sodha was included in the investigation. Exh.12 complaint given by the complainant before PSI Shri Chaudhari of Sevaliya Police Station and Exh.13 complaint on 11.1.2018 before this witness, along with the documents Exhs.17, 18 and 19 were entrusted on 13.1.2018 to Sevaliya Police Station, PSI.

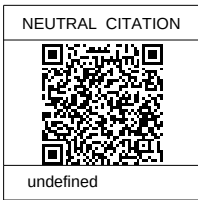
31. In the cross-examination, the witness stated that he took the charge of Sevaliya Police Station at 6:10 in the evening on 10.1.2018. Reading the declaration, he found that the deceased and the complainant – Ajayabsinh @ Goldi and their daughter were present at home. The inquest panchnama and the death form was not in his presence. From 9.1.2018 to 10.1.2018, the investigation was with regard to accidental death. The witness stated that he has not conducted the investigation of accidental death, but the investigation by him was after the registration of the complaint of murder. The witness has recorded the statement of Ranvirsinh Ratansinh Rawalji and affirmed that in the statement, it got disclosed that



the accused had come to his house at 4:15 p.m., to give medicine. This police witness has also undertaken the process of procuring call record details, however stated that he had not tried to take the CCTV camera footage from Galteshwar road, nor from the surrounding shops or the business unit. He has not recorded the statement of the medical store owner in context with the accused visiting the store for purchasing the medicine. The complaint has not been recorded by him. He had read the declaration dated 9.1.2018. The witness released the charge of Sevaliya Police Station at 6:10 evening on 13.1.2018.

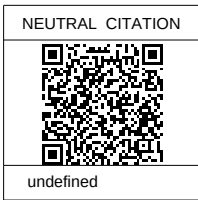
32. The evidence of this police witness, thus, discloses that on 9.1.2018, there was a declaration regarding suicidal death by the husband of the deceased and thereafter, the case of murder was recorded.

33. Exh.19, the report under Section 174 Cr.P.C. of accidental case no.1 of 2018 at Sevaliya Police Station, Kheda-Nadiad District records the name of the deceased as Kulwinder Kaur, wife of Ajayabsinh Nirmalsinh Gil,



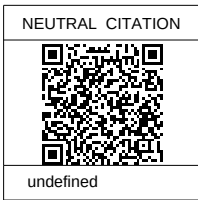
aged about 32 years, resident of B/33, Vrundavan Society, Timba na Muvada, Taluka Galteshwar, District Kheda-Nadiad. The physical structure of the deceased recorded was with thin body and height of 5 X 5 inch. The deceased was in Punjabi dress. The injury recorded on the dead body was above the left eye and below the ear. On the neck, it was observed that the skin had turned dark because of the mark owing to hanging. As per the Panchas and the police because of some undesirable reason, the deceased committed suicide by hanging herself by neck, and inspite of recording so, to know the definite cause of death, the panchas were of the opinion for postmortem.

34. The inquest Panchnama Exh.18 was drawn on 10.1.2018 between 9.30 to 10:00 in the morning. The inquest Panchnama records that there was a mark of noose of a Dupatta on the neck. Except the injury on the upper left side of the eye on the forehead and the dry blood on it, no other external injuries were found of any force on the chest of the body, nor any visible injuries could be seen

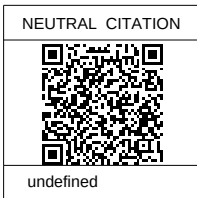


on the abdomen and no other external injuries were noticed on other part of the body. Thus, the inquest Panchnama records the ligature mark because of the noose of the Dupatta.

35. PW19 – Arunkumar Jashubhai Chaudhary, PSI of Sevaliya Police Station on 13.1.2018 was on his duty. According to his testimony on 9.1.2018, a declaration was given by Ajayabsinh Gil vide Exh.12 before him and as per the declaration, entry of accidental death no.1 of 2018 was recorded and the investigation was handed over to ASI H.P. Sodha. Thereafter, the witness PW19 went on leave on 11.1.2018 and 12.1.2018 and during that period on 11.1.2018, before the In-charge PSI Shri Chauhan Exh.13 complaint was given, which was registered as CR no. I-2/2018 at Sevaliya Police Station and when the witness PW19 resumed his duty on 13.1.2018, he took over the investigation. He received Exh.18, inquest Panchnama, Exh.19, the death panchnama and Exh.17, Panchnama of the place of offence. The clothes of the deceased after the postmortem were handed over to Kiritbhai Dhodabhai,

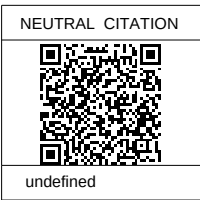


Buckle no.851, and those four clothes were received in presence of Panchas through the Panchnama Exh.47. Exh.48 was drawn to record the physical condition of the accused. The Panchnama was put in evidence excluding the confession part of the accused. PW19 referred to Exh. 21 drawn on 14.1.2018 under Section 27 of the Indian Evidence Act, whereby the weapon used by the accused and the place of hiding was recorded through the accused. The muddamal scissors was identified by this police witness as a weapon used by the accused in the crime. The clothes of the accused were seized by Panchnama Exh.27. The motorcycle was produced on 16.1.2018 and was seized by Panchnama Exh.24. Another Panchnama Exh.49, was recorded of the physical condition of the accused, which was admitted in evidence excluding the narration of confession. The police witness also identified Exh.40 postmortem note, Exh.50 as the photocopy of accident note register vardhi book, Exh.45 the sketch drawn by the Circle Inspector and Exh.51, 52, 53 the documents from FSL, Exh.54 the call details of mobile phone. This witness had recorded the statements

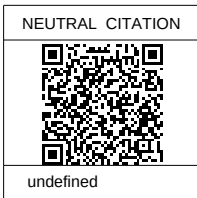


of the witnesses, and having found evidence against the accused had filed the charge-sheet.

36. In the cross-examination of PW19, the witness stated that he has taken about 11 samples on 9.2.2018 with the permission of the superior officer and had sent for examination on 19.2.2018, the Police Station received a report on 5.7.2018. The police witness had not taken the sample of the blood of the deceased for examination by FSL. The witness affirmed that from the 'waist', identified as cloth no.5 of the accused, there was no signs of any stain, nor there was any stains on baniyan and shirt, pant of the accused, while the witness stated that there were blood stains on the jacket belonging to the accused. No blood was found on the blanket of shetti-palang (cot) at the place of incident, and while the deceased was taken on the bike, there were three persons, one was driving, the deceased was in the middle and the last person holding the deceased was her husband. There were no blood marks on the body of the complainant and that no clothes of the complainant were seized.



37. PW5 – Bhagwansinh Chhotabhai Solanki and PW6 – Fakirmohammad Hamjakhani Malek were examined to prove Panchnama Exh. 24 dated 16.1.2018 drawn for the motorcycle bearing registration no. GJ-7 BP-6266 produced by witness PW2 – Ranvirsinh Ratansinh Rawalji which was used by the accused during the offence. The Panchas have not supported the said production of vehicle.
38. PW7 – Rajeshbhai Dhayabhai Macchi and PW8 – Gopalbhai Dhayabhai Macchi both the brothers were the panchas for the Panchnama Exh.27 regarding the production of clothes of the accused, which were red and black checks shirt and green colour jeans pant. PW13 – Survingsinh Raisinh Gohil, PW14 – Vinodbhai Somabhai Valand, PW15–Girishkumar Govindbhai Prajapati were examined to prove the relation of the accused with the deceased.
39. Learned Senior Advocate Mr. Syed had raised an issue regarding note corresponding column no.20 in the postmortem report Exh.40. According to the learned



Senior Advocate Mr. Syed, the remarks 'fractured and displaced hyoid bone along cricoid cartilage with ruptured tracheal rings' was subsequently written when already 'NAD' (No Abnormality Detected) was recorded. The position of hyoid bone in case of strangulation, and whether fracture would invariably be present in such situation had been considered in the judgment of **Ponnusamy v. State of Tamil Nadu, (2008) 5 SCC 587**, wherein it has been observed as under:-

"23. It is true that the autopsy surgeon, PW 17, did not find any fracture on the hyoid bone. Existence of such a fracture leads to a conclusive proof of strangulation but absence thereof does not prove contra. In *Taylor's Principles and Practice of Medical Jurisprudence*, 13th Edn., pp. 307-08, it is stated:

"The hyoid bone is 'U' shaped and composed of five parts: the body, two greater and two lesser horns. It is relatively protected, lying at the root of the tongue where the body is difficult to feel. The greater horn, which can be felt more easily, lies behind the front part of the strip muscles (sternomastoid), 3 cm below the angle of the lower jaw and 1.5 cm from the midline. The bone ossifies from six centres, a pair for the body and one for each horn. The greater horns are, in early life, connected to the body by cartilage but after



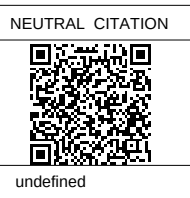
middle life they are usually united by bone. The lesser horns are situated close to the junction of the greater horns in the body. They are connected to the body of the bone by fibrous tissue and occasionally to the greater horns by synovial joints which usually persist throughout life but occasionally become ankylosed.

Our own findings suggest that although the hardening of the bone is related to age there can be considerable variation and elderly people sometimes show only slight ossification.

From the above consideration of the anatomy it will be appreciated that while injuries to the body are unlikely, a grip high up on the neck may readily produce fractures of the greater horns. Sometimes it would appear that the local pressure from the thumb causes a fracture on one side only.

While the amount of force in manual strangulation would often appear to be greatly in excess of that required to cause death, the application of such force, as evidenced by extensive external and soft tissue injuries, make it unusual to find fractures of the hyoid bone in a person under the age of 40 years.

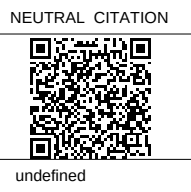
As stated, even in older people in which ossification is incomplete, considerable violence may leave this bone intact. This view is confirmed by Green. He gives interesting figures: in 34 cases of manual



strangulation the hyoid was fractured in 12 (35%) as compared with the classic paper of Gonzales who reported four fractures in 24 cases. The figures in strangulation by ligature show that the percentage of hyoid fractures was 13. Our own figures are similar to those of Green.”

24. In *Journal of Forensic Sciences*, Vol. 41 under the title — Fracture of the Hyoid Bone in Strangulation: Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:

“The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, post-mortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone. We compared the case profiles and xeroradiographic appearance of the hyoids of 20 victims of homicidal strangulation with and without hyoid fracture (n = 10, each). The fractured hyoids occurred in older victims of strangulation (39 ± 14 years) when compared to the victims with unfractured hyoids (30 ± 10 years). The age dependency of hyoid fracture correlated with the degree of ossification or fusion of the hyoid synchondroses. The hyoid was

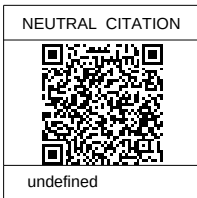


fused in older victims of strangulation (41 ± 12 years) whereas the unfused hyoids were found in the younger victims (28 ± 10 years). In addition, the hyoid bone was ossified or fused in 70% of all fractured hyoids, but, only 30% of the unfractured hyoids were fused. The shape of the hyoid bone was also found to differentiate fractured and unfractured hyoids. Fractured hyoids were longer in the anterior-posterior plane and were more steeply sloping when compared with unfractured hyoids. These data indicate that hyoids of strangulation victims, with and without fracture, are distinguished by various indices of shape and rigidity. On this basis, it may be possible to explain why some victims of strangulation do not have fractured hyoid bones."

25. Mr Rangaramanujam, however, relied upon *Modi's Medical Jurisprudence and Toxicology*, 23rd Edn. at p. 584 wherein a difference between hanging and strangulation has been stated. Our attention in this connection has been drawn to Point 12 which reads as under:

"Hanging	Strangulation
Fracture of the larynx and trachea —Very rare and that too in judicial hanging.	Fracture of the larynx and trachea —Often found also hyoid bone (<i>sic</i> fracture)."

26. A bare perusal of the opinion of the learned author by itself does not lead to the

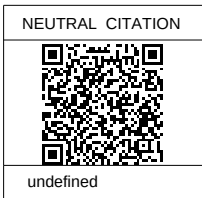


conclusion that fracture of hyoid bone, is a must in all the cases.”

40. Thus, conclusively it can be said that fracture of hyoid bone is not a must in all the cases. The case against the accused is based on circumstantial evidence. The judgments on this aspect would become relevant to refer since the principles laid down would be a guiding line to decide the guilt of the accused.

41. In the case of **Hanumant Govind Nagundkar & Anr. v. State of Madhya Pradesh, AIR 1952 SC 343**, wherein it has been observed as under:-

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



must have been done by the accused.”

42. In the case of **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, it has been observed as under:-

“The following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:

(1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established,

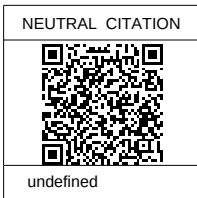
(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(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

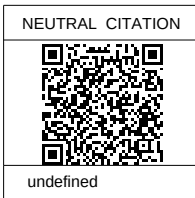
(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

It is vital that any circumstance adverse to



the accused must be put to him under Section 313, CrPC, 1973; otherwise it must be completely excluded from consideration because the appellant did not have any chance to explain them."

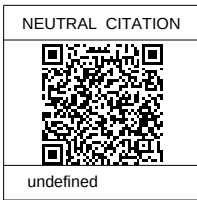
43. The complaint of suicide appears to be given by the husband of the deceased as being informed by the accused. The person last with the deceased was the accused. The time when accused visited the house was in the absence of the complainant, who the accused reports to be his friend. The accused is required to explain why he was at complainant's house in his absence. The prosecution story is that the deceased and the accused were having illicit relationship. The prosecution case was that the deceased was considered as an hindrance in the marriage of the accused so they quarreled and accused hit the deceased with the scissors and pressed her neck strangulating her to death. The presence of accused is not denied. In the statement under Section 313 of the Cr.P.C., the accused has admitted of taking the deceased on the bike driven by him and the deceased was made to sit in between, while the complainant was as second pillion rider when they headed for immediate treatment



to the hospital.

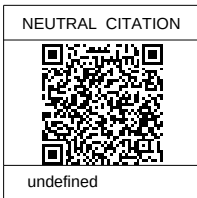
44. The accused had denied of calling the complainant on the phone, asking him to come expeditiously and also denied that when the complainant came home, he saw his wife on the bed and that the accused was present there at that time.

45. The presence of the accused at the house of the deceased cannot be denied by the accused, since from the house, they had taken the deceased to the hospital. The CDR of mobile phone was produced at Exh.54, however, in absence of the certificate under Section 65B(4) of the Indian Evidence Act, 1872, the same cannot be read in evidence as laid down in the case of **Mohd. Arif @ Ashfaq v. State (NCT of Delhi), (2023) 3 SCC 654**. The prosecution, thus, to prove the presence of the accused in the house of the deceased, had examined PW9 and PW10 husband and wife who both had seen the accused heading towards the house of the complainant-Ajaybsingh at 3.45 p.m. PW9 was serving as a teacher at Thermal Power Station, GEB English Medium School, and



was also giving tuition. The deposition of PW9 – Kirtiben Gautamkumar Ahuja notes that her husband PW10 was working as technician at Thermal Power Station. He was serving there since ten years. PW9 had two daughters and they were staying at GEB Colony. Earlier they were residing at Gokulesh Township at Timba na Muvada, and she was knowing the deceased Kulwinder Kaur, wife of Ajayabsingh @ Goldy of Vrundavan Society, as was going to her place for getting dresses stitched. They were also visiting each other's house. She was also knowing Ajayabsingh's friend Sahin Ahmed Pathan (accused) as sister of accused, Nazira Pathan and the witness were serving together earlier and there she had seen the accused once or twice.

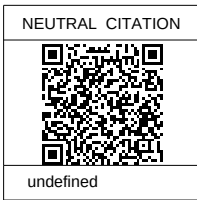
46. On 9.1.2018, she had gone to give tuition to the daughter of Prakash Yadav, at Aaradhya Society at 3:45 p.m. and at that time, she had seen accused going towards the house of Ajayabsingh in Vrundavan Society. Her husband dropped her there and went away. PW9 then at around 5:00 p.m. received a phone call from



Indrajit Rathod informing her that her friend Kulwinder Kaur had committed suicide by hanging herself and that she was taken to GEB hospital and so she phoned her husband informing him about the incident and asking him to go the GEB hospital. The witness PW9 was about to go the GEB hospital, but her husband informed her that deceased was taken to Sevaliya. So PW9 returned home. At her house, in the evening, she had inquired from her husband.

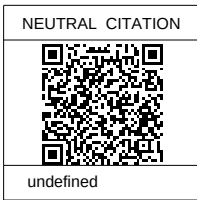
47. The evidence of PW9 has not been challenged, rather the cross-examination, affirmed the fact that they had seen the accused going to the society while they were standing at the cross road.

48. PW10 – Gautamkumar Ashokkumar Ahuja has corroborated the evidence of his wife PW9. The witness had stated that he had seen Sahin Ahmed Pathan (accused) going towards the house of Ajayabsingh @ Goldy at Vrundavan Society when he had gone to drop his wife for tuition. PW10 had gone to Sevaliya, where he met Goldy (complainant) who told PW10 that when he



was at his job, he received the phone call of Sahin Ahmed Pathan (accused) who asked the complainant to come as soon as possible at home. So the complainant went home taking the vehicle of complainant's friend – Sandip Rawalji and saw that his wife was lying on the bed and her legs were hanging down and was hurt on the forehead and Sahin Pathan was standing beside her and when the complainant asked accused, then accused informed that Kulwinder Kaur had committed suicide by hanging herself and that the accused had brought her down and therefore, they had taken her to hospital, where doctor had declared her dead.

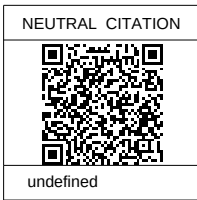
49. PW10 was cross-examined, wherein it was recorded that when Kulwinder Kaur was taken to the hospital, police was present there. The witness PW10 had no communication with the police. The house number of Prakash Yadav in Aaradhya Society was five. There are shops opposite to the society and further there was a huge temple. An angle falls between Vrundavan and Aaradhya society. Vrundavan society is divided into Part I



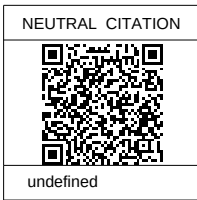
and Part II. Goldy's house was inside and since the society was big there was large frequency of people.

50. The evidence of PW10 has remained unshaken. The fact of PW10 seeing accused going towards the house of Goldy remains unchallenged. The evidence of PW9 and PW10 connects the accused going towards the place, where the deceased and complainant were residing.

51. For the evidence recorded of PW9 and PW10, the defence raised by the accused in his statement under Section 313 of the Cr.P.C. is that they are friends of complainant, and police had implanted these witnesses to give evidence against him. No such question had been put to the witnesses during the cross-examination, to challenge their testimony. The evidence of PW9 and PW10 further gets solidified by the evidence of PW11 – Sandipkumar Dilipsinh Ravalji who was working as supervisor in logistic department in Ultra-tech Company. On 9.1.2018, the witness PW11 started in his vehicle GJ-17 N-8232 from his house at 1:45 p.m. and reached Gayatri Temple at Thermal, at that time, his friend Ajayabsingh alias



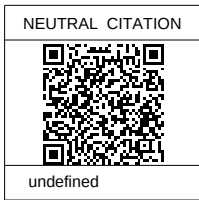
Goldy and his wife Kulwinder Kaur were there, Goldy sat in his vehicle and they both proceeded towards their service place. The witness said that the wife of Goldy returned back home. After reaching to the Company, they took the charge from Rahul Jaddu. According to the witness thereafter, at around 4 - 4:15 p.m., Goldy received a phone call from his friend Shahin Pathan who asked to come expeditiously, telling him that sister-in-law has hanged herself. So Goldy took this witness vehicle, to reach home. Thereafter, according to the witness, he received a phone call around 5:00 p.m. informing that the complainant had taken his wife to GEB hospital where she was declared dead. So the witness and the staff persons went to GEB hospital. In the cross-examination, it has been recorded that this witness and Goldy were doing job together for seven to eight years. The witness would visit Goldy's house only for some work. This witness has no knowledge about the personal life of Goldy.



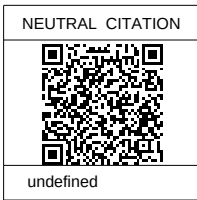
52. The undisputed fact is not controverted that the complainant- Goldy had gone to his house on this witness vehicle. Goldy had gone together with PW11 at their work place in the afternoon. The witness had picked up Goldy on his way to his job. This witness had seen wife of Goldy then.

53. PW12 – Dhawal Prafulbhai Shukla was examined to prove the duty shift of the complainant. PW12 was having his job as Logistic Officer at Ultratech Company. His duty included dispatch planning and duty allocation. The witness deposed that in their Company, there was 'A', 'B', 'C', three shifts. In shift 'A', from morning six to two in the afternoon, Rahul Jagdishbhai Jaju was working and in Shift 'B' were Sandip Ravalji and Ajayabsingh alias Goldy and in shift 'C', there were other persons.

54. According to the witness PW12, on 9.1.2018, at about 4:30 to 4:45 p.m. when he was in his office, his employer Rakesh Pande received a call from Sandip Ravalji, and the employer informed them that Ajayabsingh's wife has died.



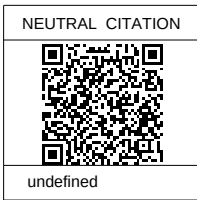
55. Regarding the duty of the complainant on 9.1.2018, the witness corroborated PW11 Ravalji that Goldy and Ravalji had joined in 'B' shift at 2 O'Clock in the afternoon, taking charge from Rahul Jaju, and Goldy had left office at about 4:15 to 4:30 p.m. on the bike. In the cross-examination, the witnesses affirmed that he has not given the duty register to the police.
56. The prosecution had examined the employer of the accused. The evidence of PW2 – Ranveersinh Ratainsinh Ravalji would become relevant to examine the fact that at the time of the incident, the accused was not at his working place. PW2 was the contractor, and accused Sahil Ahmed Pathan was working as supervisor in his office. The business of PW2 is to give his own two vehicles and ten vehicles of market for cement carting.
57. On 9.1.2018, the witness had gone home during afternoon. The keys of his office would remain with the accused. On that day post afternoon the witness had gone to his office. Thereafter, the accused was sent to



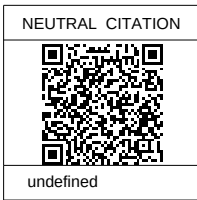
collect money and to do RTGS at Sevaliya State Bank. The witness dropping the accused had gone home. Thereafter, PW2 received a call from accused informing him of having received the money. The witness deposed that he had asked for medicine from Jalaram Medical Store, Sevaliya. According to the witness, around 4 to 4:15 p.m, the accused had gone to this witness house to give medicine, and then according to the witness, accused went out to attend office.

58. This witness PW2 is accused employer. He is giving evidence that almost about 4 to 4:15 p.m., the accused left his house. The witness said that the accused was to head towards office. The witness is not stating that accused actually returned back to his office.

59. The evidence of PW2 further states that in the evening around 5 to 6 p.m., he received a phone call from the accused informing that they had brought, wife of Goldy at GEB hospital, and the accused had asked PW2 to come there.

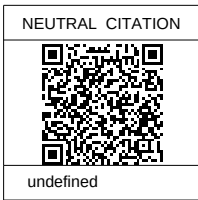


60. The witness PW2 went to GEB hospital, where the doctor declared her dead, so asked them to take her to Sevaliya Government hospital and thereafter, they went to Sevaliya Government hospital, where postmortem of Kulwinder Kaur was conducted and the doctor after the postmortem, informed that the deceased was murdered. The witness also stated that the doctor had also shown the injury on the head and had told that the deceased's hands have turned reddish.
61. The witness PW2 would be considered an independent person who has affirmed the head injury and the cause of death as homicidal. This witness is the employer of the accused. There is no reason to doubt his testimony. The testimony of this witness is very important piece of evidence to join the chain to prove the presence of the accused at the house of the complainant, as the evidence proves the fact that about 4:00 to 4:15 p.m., the accused had left PW2 house, and thereafter, he received the call of the accused at around 5 to 6 p.m. PW2 as employer could not clarify that actually the accused had



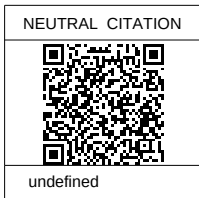
returned back at the work place after 4 to 4:15 p.m.

62. The evidence of PW2 does not affirms of knowing Kulwinder Kaur having love affair with anyone. PW2 had not known so, but in the cross-examination, even after being declared hostile, had affirmed that the accused was engaged to be married in a Village near Nadiad. The motive for the cause of quarrel between the deceased and accused as proposed by the prosecution gets a corroboration in part, though not in full.
63. PW3 – Bhimsinh Kishorbhai Parmar and PW4 – Aamirbhai Ashifhusen Vohra were Panch witnesses examined to prove Exh.21 the Panchnama, while both the panchas denied of 'reconstruction Panchnama' drawn on 14.1.2018.
64. The police through the Panchnama proposed to bring evidence that the accused had volunteered to show the place of offence. The information given by the accused before the panchas were sought to be proved, but the prosecution failed, since the panchas have not supported

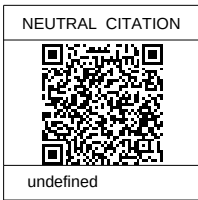


the same. The confessional statement of the accused under Section 27 of the Indian Evidence Act, 1872 becomes admissible if it lead to discovery. The weapon here is shown as the scissor, which the accused had removed it from the loft above the toilet-bathroom area by climbing on the table. The scissor reflected dry blood stains noticed while drawing Panchnama. The scissor is the weapon which gets connected to the offence for the injury caused on forehead of the deceased. The injury on the head was noticed by PW2 the employer of the accused which was shown by the doctor as well as Jamadar present there. The argument raised was that injury shown was later on created and that there is no certainty about the side on the forehead the deceased sustained injury.

65. The accused when he was asked about the injury on the right side of the forehead, a contuse wound in the measurement of 2x2 cm., prior to the death, in his 313 Cr.P.C. statement, the accused said that it was false and that when the deceased was taken to GEB hospital, there was no such injury and that GEB Hospital records have

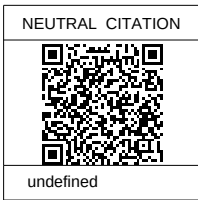


not been produced. The accused was also put to answer the evidence, which had come against him in view of the internal examination of the dead body during the postmortem, about the contusion and bruise found on the right side of the forehead and one superficial fracture on the right side of temporal region and that the brain was pale with congestion. The accused denied the same. Even with regard to the evidence of fracture and displacement of the cornua, the accused could only say that he had no knowledge, and for the finding of cardio respiratory arrest due to blockage of upper airway by the external pressure, the accused stated that it was totally false, and was a false finding and for the evidence of head injury on the right side and the ligature marks on the neck, the accused stated that it was totally false since there was no such observation in the postmortem note regarding the ligature marks and that the injury which has been shown is inconsistent with the inquest report and that the injury had been later on got up. The accused was also asked to answer about the evidence which had been recorded, that in case where a person



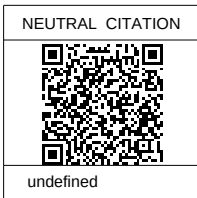
hangs himself, then in that circumstances, there would be a lump and no ligature marks would appear, and that in the present case, the ligature mark was continuous. In case of hanging, the ligature mark would be on the upper part of the neck, while in the present case, the mark was on the lower part of the neck, and instead of "V" shape, it was continuous. To answer that, the accused stated that the opinion of the doctor was baseless.

66. Learned Senior Advocate Mr. Syed has raised submission that the conduct of the appellant - accused is inconsistent with guilt. It was the appellant who had telephoned the husband of the deceased and called him home and the appellant had remained at the house until he arrived who then carried the deceased on the motorcycle to the GEB hospital. Learned Senior Advocate Mr. Syed raised an argument that an assailant would never summon husband to proceed and then drive the victim to the hospital. The Trial Court converted the exculpatory conduct into an incriminating circumstances by speculating as to how an ordinary man would have behaved and that the Trial Court had adopted a mode of

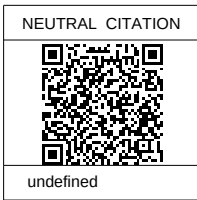


reasoning not open in a circumstantial case. Learned Senior Advocate has submitted that the medical evidence itself leaves the hypothesis open since no ligature mark at all was recorded in the postmortem report at Exh.40 and that such marks for the first time surfaces in the deposition of PW16, which shows that there is an improvement made by the doctor not supported by the contemporaneous documents. Learned Senior Advocate Mr. Syed has placed reliance on the evidence in the cross-examination of PW16, where according to Learned Senior Advocate Mr. Syed, the doctor has admitted that the injury could also be caused by hanging.

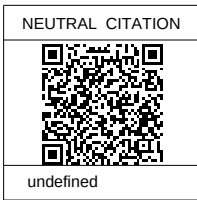
67. The case raised from the side of the accused was of hanging, to show it as suicide. From the very beginning, the accused had projected the case of suicide before the deceased's husband i.e. the complainant. The admitted position has not been denied by the accused that he was present there at the place of the incident i.e. the house of the complainant till the complainant arrived there. It was the accused who had called the complainant and the accused was lastly with the deceased. Immediately on



the phone, while calling the complainant, the accused had not informed the real facts, when the complainant arrived, he saw his wife lying on the bed. As per the deposition of PW10-Gautamkumar Ahuja, the complainant when he was at his job, he received a phone call from Shahin Ahmed Pathan (accused) asking him to come home expeditiously and therefore, by taking the vehicle of his friend – Sandip Rawalji (PW11) the complainant reached his home, where he had seen his wife lying on the bed and her legs were hanging down, she had injury on the forehead and Shahin Ahmed Pathan was standing besides her. When the complainant inquired from the accused, the accused told the complainant that Kulwinder Kaur has hanged herself by neck, and that he had brought her down. They had taken her to the hospital where the doctor declared Kulwinder Kaur as dead. This circumstance connecting the accused, complainant and the deceased, by the evidence on record gets substantiated by the communication, which took place between the complainant and the witness PW10.

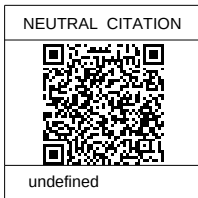


68. The accused had stated before the complainant that Kulwinder Kaur had committed suicide by hanging herself and such information was also given to the police to consider it as a case of suicide and thus, report under Section 174 of the Cr.P.C. was recorded. Had it been the case of suicide by hanging herself to the ceiling fan, the accused was required to immediately inform the police without tampering with the hanging body. Here the accused had informed the complainant that his wife had hanged herself and that he had brought her down and made her lie on the bed. The complainant did believe the accused and therefore, the complainant along with the accused took the deceased to the GEB hospital, where immediately, the doctor declared her dead. The dispute raised of non-production of the documents of GEB Hospital would not become vital since according to the complainant PW1, when his wife was on the bike, she was not conscious and when they brought her to GEB hospital, the doctor declared his wife as dead and it was at that time, he had inquired from the accused and then the accused informed him that his wife was hanging with

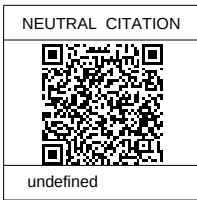


the ceiling fan and that he had brought her down. So thereafter the complainant had called his brother-in-law at Surat to inform about the same and then, the dead body of the wife was brought to Sevaliya Government hospital and then a declaration was given to Sevaliya Police Station regarding the incident informing the police of the case of suicide. So at GEB hospital, there was no treatment and the doctor had immediately declared the deceased as dead, while according to the complainant, his wife was unconscious even on the bike.

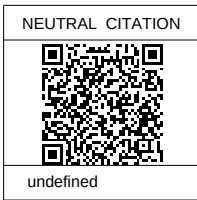
69. The information was given about the death, by Exh.12 on 9.1.2018, the complainant in the information, stated being a Supervisor for the last ten years in Sangol Ultratech Company, his wife Kulwinder Kaur doing household as well as sewing work and they had 11 years old daughter and his marriage span was about 12 years. They were originally from Punjab and were residing at Kevadia Colony. The complainant had also got it recorded in Exh. 12 that after having lunch, he left his home at 1:45 to 2:00 p.m. for his job and at that time, his wife and daughter were at home and around 4:15 p.m., he



received a call on his mobile phone from his friend – Sahil Fakirmohammad Pathan (accused) and Exh.12 thus records of complainant reaching home and seeing his wife lying on the bed and Sahil Pathan standing nearby and at that time, when he inquired from the accused, the accused asked to immediately take her to the hospital and in the complaint itself, it is recorded that while they were on the bike to take Kulwinder Kaur to Thermal GEB hospital, she was not conscious and the doctor examining her, declared her dead and it was at that time that he had inquired from the accused who told him that when he had come home, his wife Kulwinder Kaur was hanging from the ceiling fan with a Dupatta and therefore, he had brought her down and the complainant has also got it recorded in Exh.12 that thereafter he informed his brother-in-law – Minto Dhillon at Surat and his in-laws at Punjab and had brought his wife to Sevaliya Government Hospital and thereafter, had come to the Police Station to give the declaration. According to the complainant as recorded in Exh.12, the incident had happened prior to 4:00 p.m. in the evening.

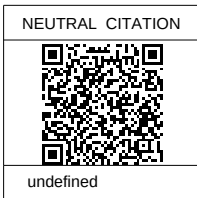


70. Exh.51, inspection report of the place by the Scientific Officer FSL investigation van, DSP Office, Nadiad/Kheda was produced in evidence of PW19 - Police Sub-Inspector-Arunbhai Jashubhai Chaudhari who had received all the documents in connection with accident death no.1/18. The residential house of the deceased was recorded as B/32, Vrundavan Township, Thermal. The place was visited on 10.1.2018 between 14:30 to 15:30 hrs. The brief fact with regard to the history was recorded, as deceased Kulwinder Kaur Ajayabsingh Gill, aged about 32 had hanged herself to death for undesirable reason. Shri Himmatsinh Punambhai, had given the total information regarding the incident who had shown the place where the FSL officer had recorded about the porch which was grilled and thereafter, there was living room and on the right side to the wall, there was a shetty and left side to the wall, was sewing machine below the window and opposite the sewing machine, on the wall in the middle a television and beside it there was a table and after that room, there was platform kitchen with the door, whereupon there was



cooking stove along with boxes of spices, etc. besides the platform, there was a fridge and on the wall, there was utensil rack, and from the kitchen, on the left side, there was a bedroom, where the incident had taken place. In the room on the left was a cupboard and drum and on the right, there was wooden cupboard. A brown colour ceiling fan was in the middle and below that, there were two wooden shetty.

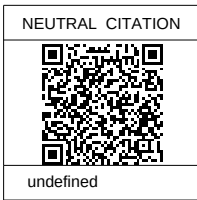
71. On observing the ceiling fan, it was noticed that the deceased had hanged herself with the towel, from the ceiling, the body of the fan was at 1 ft and 3 inches, the distance from the fan to the ground was 8 fts. The distance between the fan blades, to the table on the shetty was 5 fts. The fan was attached to the ceiling with a pipe. The body of the ceiling fan and the attached blades were examined, whereupon there were normal dust particles and cobwebs. On total observation, it was concluded from the situation, that though there was towel hanging on the ceiling fan attached with the pipe, there were no noticeable signs. Thus, it was found that the fan was not used for hanging. The towel was seized



for investigation. Opposite the kitchen in the porch, after the toilet-bathroom, there was a door to enter the Varanda.

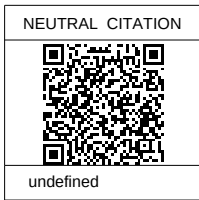
72. In view of local place visitation report by the Scientific Officer of FSL, the defence of the accused that the deceased had committed suicide by hanging herself with ceiling fan gets ruled out. The place was inspected immediately on 10.1.2018 between 14:30 to 15:30 hrs. The police has recorded in Exh. 51 that the place was inspected through the FSL Officer and the report was drawn.

73. In view of the conclusive opinion of the FSL officer that on examining the body of the ceiling fan and attached blades, the ceiling fan was not used for hanging, the case of suicide by hanging does not become believable. In background of this conclusion, now the case as produced by the prosecution becomes necessary to be examined, the cause of death was cardio respiratory arrest due to blockage of upper airways by external pressure. Whether the external pressure was by hands or by using a

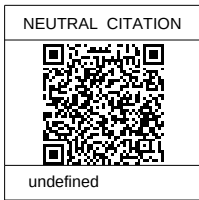


Dupatta would now be necessary to be examined. "Palmar strangulation" would be by forcibly closing the throat by both palms. 'Garrotting' is where the victim is suddenly overpowered from behind by using a rope, Dhoti or the hands, while in this case, a reference is made of Dupatta, which was sent for FSL examination and the Biological Department by its report produced during the trial at Exh.63 had not found any presence of blood on the grimed Dupatta.

74. Dr. Ketan Mahendrabhai Mistri, while had examined the dead body had found a deep contuse wound on the right side of the forehead measuring 2x2 cm. Argument was raised by learned Senior Advocate Mr. Syed that in inquest Panchnama, the injury has been recorded on the left side of the forehead, while the postmortem report along with the testimony of Dr. Mistri, the injury noted was on the right side of the forehead. The accused in his 313 Cr.P.C. statement has questioned the non-production of any document from GEB Government hospital. As herein observed, when the deceased was

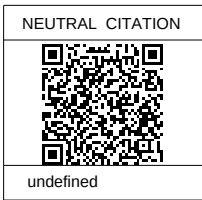


taken to GEB Hospital, the doctor immediately declared her dead and therefore, the body was sent for postmortem and when no medical treatment was given to the deceased non-production of the document would not come in the way to consider the circumstances against the accused. The discrepancy in the inquest Panchnama and the postmortem report regarding injury to the right and left side of the forehead would not be considered as a major discrepancy since as noted in Exh.18 inquest Panchnama, it was drawn at the postmortem room of CHC hospital, the dead body was placed on a stand. The head of the dead body was on the western side and the legs were noted towards east direction, so if that observation is to be considered, then, the Panchas would probably have stood on either of the side of the body and therefore, an observation of the injury on the forehead would depend upon the place, where the Panchas would have stood for drawing the Panchnama. Thus, in that circumstances, the medical evidence, as recorded by the doctor conducting the postmortem would become a reliable and admitted

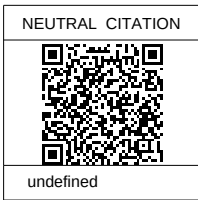


evidence and the position gets further corroborated by the evidence of the independent witness – PW2 – Ranvirsinh Ratansinh Ravalji, the employer of the accused who had given evidence that the doctor had showed the injury on the head of the deceased and had informed them that the deceased was killed to death. This information was immediately given by the doctor conducting the postmortem. This becomes the necessary evidence in the chain to believe that the deceased had sustained injury on the head, which as per the prosecution case, was by a scissor, which was used by the deceased for sewing purpose. The scissor was sent for FSL examination and the FSL report Exh.63 records blood on the scissor of yellow metal about 23.3 cm. and the handle of 12 cm. According to the police, the scissor was recovered at the instance of the accused by way of Panchnama Exh.21 from the loft of the toilet-bathroom besides the bed room, the accused climbed upon a table and produced that scissor.

75. Learned Senior Advocate Mr. Syed submitted that in



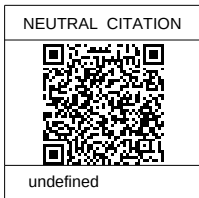
column no.20 when the observation was NAD (No Abnormality Detected), then the observation thereafter in connection with the wind pipe is an overwriting and afterthought, which could have been subsequently written by the doctor to assist the prosecution. This argument raised would not come to the benefit of the accused, as PW2 - the employer of the accused has given the evidence that initially, the doctor after conducting the postmortem had informed that the death was homicidal and the witness himself had seen the injury on the head as well as had seen the hands of the deceased turned red, which according to PW2 was shown to them by the doctor as well as the Jamadar. In the examination-in-chief, Dr. Ketan Mistry – PW16 while giving the conclusion of the death caused by external pressure, had given evidence of ligature mark on the neck. The doctor had very categorically stated that had the deceased committed suicide by hanging, then, there would not be any ligature mark in continuous form and that the mark seen was not in a “V” shape. Learned Senior Advocate Mr. Syed has also referred to the cross-examination,



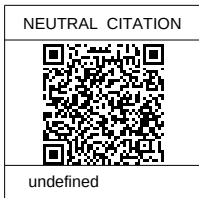
where the doctor has affirmed that in the postmortem, he has not made observation with regard to the ligature mark, nor has made observation with regard to colour of the ligature mark on the neck. The doctor has also clarified that if it had been a case of hanging, then, the tongue would have been protruded out and there would be drooling of saliva from the mouth. The doctor, thus, had clearly ruled out the case of self-hanging and thus, ruled out suicidal strangulation and was of the clear opinion concluding the use of external force.

76. In the cross-examination, the doctor affirmed that had it been the case of struggle because of suffocation due to external force, then there would be possibility of seeing the scratch marks by nails. The doctor was also of an opinion that if in case of suicide by hanging, then, there are also possibilities of hyoid bone fracture.

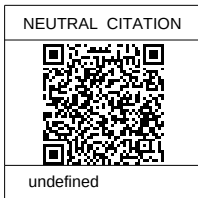
77. In the cross-examination, the doctor had affirmed that his opinion with regard to ligature marks as has been stated in the examination-in-chief of being in a continuous form rather than in a "V" shape has not been



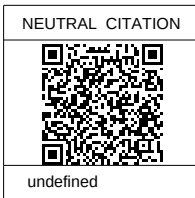
noted in the postmortem. In context to the issue raised of subsequent writing corresponding to column 20, it could be noted that the only question, which was raised by way of cross-examination was with regard to writing '1' in place of '0', which was in connection with the date of postmortem and date below the signature of Dr. Ketan Mistry, where there is an overwriting of '0' on '1' to read the date as 10.1.2018 instead of 11.1.2018. The argument of learned Senior Advocate Mr. Syed that in column no.20, the observation with regard to larynx, Trachea and bronchi was subsequently written under the instructions of the police, cannot be accepted since no such question was raised to the doctor with regard to alleged additional writing in the postmortem report for the doctor to explain such observation. No such similar question of any purported overwriting had been put to the doctor to have the explanation. Prima facie there does not appear to be any such specific overwriting, where the observation is of, fractured and displaced hyoid bone along fracture, cricoid cartilage with ruptured Trachea rigs.



78. The very observation made in the case of Ponnusamy (supra) would become relevant in the present matter, where it would not be necessary to prove that invariably, there should be fracture of hyoid bone. In case of 'hanging' fracture of larynx and trachea is very rare. Thus, the case as concluded by the doctor, of cardio respiratory arrest due to blockage of upper airway by external pressure would be sufficient to consider the present case of homicidal strangulation.
79. "Throttling" is where constriction is produced by the pressure of the fingers and palms upon the throat becomes believable case against the accused as drawn in the charge of the Trial Court.
80. The accused failed to explain about his presence at the house of the complainant with the deceased, in absence of the complainant. The prosecution had tried to prove the motive to strangle the deceased by the compression of neck by force, attributing that the deceased had quarreled with the accused because of his



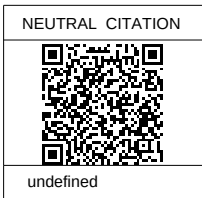
engagement to marry some other lady. The fact of accused having engaged to marry has been affirmed by PW2 - the employer of the accused, who gave the evidence that the accused was engaged in the Village near Nadiad. The case of the prosecution that the accused was meeting the deceased frequently has not been supported by PW13 - Survirsinh Raising Gohil who has his job in Ambuja Transport. He knows the complainant Ajayabsingh who is also known as Goldy and having his house opposite to his. The witness was not knowing the accused. PW13 was declared hostile and the cross-examination by the Public Prosecutor has not affirmed the fact that the accused was frequenting the house of the complainant and he was having love affair with the deceased and since the accused was engaged to be married and therefore, there was quarrel between the deceased and the accused and for that reason, he had strangulated the deceased to death. PW14 - Minubhai Somabhai Valand having haircutting saloon is a neighbour of the complainant. He has stated that at the time of the incident, Goldy was his neighbour and the



witness was knowing accused as he was often visiting Goldy's house and was a friend of Goldy. This witness has no other knowledge, except the details, which he has given in the examination-in-chief. PW15 – Girishkumar Govindbhai Prajapati was serving in ITI, Lala na Muvada. The house of the complainant is at the rear side of his house. He has no knowledge about the postmortem note and does not know the accused. The witness was declared hostile. The witnesses could not state about any illicit relation between the deceased and the accused. Thus, it could be concluded from the evidence of PW14 – Vinodbhai Valand that the accused was a friend of the complainant and would often visit the complainant's house.

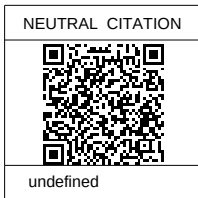
81. The case of **Vaibhav** (supra) relied upon by learned Senior Advocate Mr. Syed was of circumstantial evidence and the aspect of motive was considered by the Hon'ble Supreme Court and it was observed in Paragraph 37 as under:-

"37. Thus, a complete absence of motive, although not conclusive, is a relevant factor

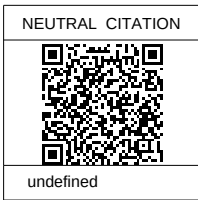


which weighs in favour of the accused. No doubt, the final effect of such absence on the outcome of the case shall depend upon the quality and weight of surrounding evidence. In the present case, the testimonies of prosecution witnesses have invariably revealed that the appellant and the deceased were friends and there was no ill-will between them. Even the father of the deceased has testified to that effect. The relevance of motive in a case of homicide has been a subject of prolonged discussion. Ordinarily, in cases involving direct evidence of the commission of crime, motive has little role to play as presence or absence of motive is immaterial if the commission of the crime stands proved through other evidence. Even otherwise, motiveless crimes are not unknown to the society."

82. Here in the present case, the accused could not explain his reason to visit the house of the deceased in absence of the complainant who was his friend. PW14 as immediate neighbour of the complainant could prove the fact that the accused was known to him since he was a friend of the complainant – Goldy and he had often seen the accused coming to the house of the complainant. The evidence of PW9 – Kirtiben Gautamkumar Ahuja and PW10 – Gautamkumar Ashokkumar Ahuja also prove the fact that they had seen the accused going towards the

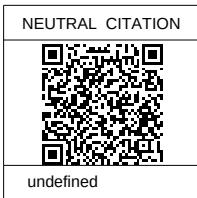


house of the complainant and they had seen him around 03:45 p.m. and the fact gets supported by the evidence of PW2 - the employer of the accused, where according to the evidence, in the afternoon, the accused had accompanied the witness – PW2 and thereafter, had gone to collect money from the State Bank and for RTGS process. As per the evidence of PW2 at around 4 to 4:15 p.m., the accused had come to his house to give medicine and then he received a phone call from the accused between 5 to 6 p.m. This fact also proves that in the afternoon, the accused was not at his place of work and the accused himself has admitted in his statement under Section 313 of Cr.P.C. that when the complainant had asked him as to what had happened, he had insisted to take the deceased immediately to the hospital and the accused along with the complainant had taken the wife of the complainant – Kulwinder Kaur on the bike to Thermal GEB Hospital. The bike was driven by the accused, the wife of the complainant was sitting in between and at that time, the deceased was not conscious. This evidence has been admitted by the accused. The complainant



stated that he received a phone call from the accused at about 4:15 p.m. and he had rushed to his house and as stated by PW11 – Sandipkumar Dilipsinh Rawalji, the complainant took his vehicle to reach home and as per the evidence of PW2, the employer of the accused when they left their office in the afternoon on 9.1.2018, the accused had dropped him at his house. The vehicle, which was used by the accused was seized by the police by the Panchnama Exh.24, whereby PW2 has produced the motorcycle Hero Passion Pro with RTO passing no. GJ-07 BP-6266.

83. The evidence of the complainant recorded as PW1 that after lunch on 9.1.2018 when he started from his house to go to his place of service, his wife had walked him to the door and his daughter, aged about 11 years, was in the house. Learned Senior Advocate Mr. Syed has very strenuously argued that non-examination of the daughter is a very vital missing link in the prosecution case and the benefit, thus, should be extended to the accused.

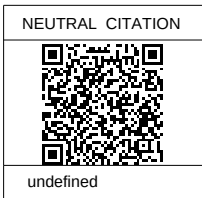


84. In the case of **Rajkumar vs. State of M.P., (2014) 5 SCC 353**, it has been held as under:-

"18. It is a settled legal proposition of law that every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age or extreme old age or disease or because of his mental or physical condition. Therefore, a court has to form an opinion from the circumstances as to whether the witness is able to understand the duty of speaking the truth, and further in case of a child witness, the court has to ascertain that the witness might have not been tutored. Thus, the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him. The trial court must ascertain as to whether a child is able to discern between right or wrong and it may be ascertained only by putting the questions to him.

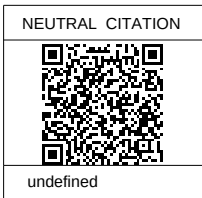
19. This Court in *State of M.P. v. Ramesh* [(2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] , after considering a large number of its judgments came to the conclusion as under : (SCC p. 792, para 14)

"14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely

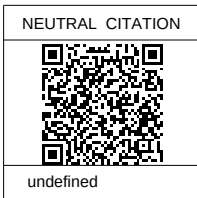


upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”

85. Section 118 of the Indian Evidence Act, 1872 makes provision with regard to person who shall be considered competent to testify. The child witness competency can be ascertained by questioning him/her to find out intelligence to understand the occurrence witnessed and duty to speak the truth before the court and thereafter, his/her statement inspiring confidence can be relied upon even without corroboration. With respect to children, no precise age is fixed by law within which they are absolutely excluded from giving evidence on the presumption that they have no sufficient understanding. No precise rule can be laid down respecting the degree of intelligence and knowledge, which will render a child a competent witness. While considering the evidence of a child, it should be kept in mind that the children



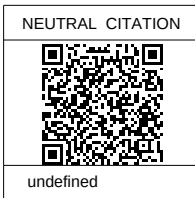
particularly of tender age would have good memory, but simultaneously they could be easily taught stories which they believe to be true and are influenced by fear and punishment. The competency of the witness to testify could be examined if in the opinion of the Court, the witness is able to understand the question put to them and witness could give rational answer to those questions as provided under Section 118 of the Indian Evidence Act owing to (i) tender years, (ii) extreme old age, (iii) disease of mind or body, or (iv) any other cause. Section 118 is with regard to the competency of the parties as witness. Evidence of child witness is generally admissible in evidence, but weight to be attached to it, is a matter of consideration for the court. Anybody can give evidence in the court provided that he is acquainted with the facts of the case. In the present case, though the father could state that in the afternoon during the lunch time, his daughter was at home, but no question was raised to the father that when he had come home, on the phone call of the accused whether the daughter was still present in the house. Had the complainant as a father admitted the



presence of the daughter at the time when he went home after the phone call at 4:15 p.m., then non-examination of the child would have become a vital fact to be considered and probably then could have been the missing link.

86. The accused's duty under Section 313 Cr.P.C. had been considered in the case of **Rajkumar** (supra), the permissibility to draw adverse inference against accused in case of non-explanation of accused against incriminating evidence has been dealt with in Paragraph 22, which reads thus:-

"22. The accused has a duty to furnish an explanation in his statement under Section 313 CrPC regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 CrPC is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide *Ramnaresh v. State of Chhattisgarh* [(2012) 4 SCC 257 : (2012) 2 SCC (Cri)

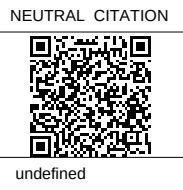


382] , *Munish Mubar v. State of Haryana* [(2012) 10 SCC 464 : (2013) 1 SCC (Cri) 52 : AIR 2013 SC 912] and *Raj Kumar Singh v. State of Rajasthan* [(2013) 5 SCC 722 : (2013) 4 SCC (Cri) 812].)”

87. In the instant case, the appellant has given selective explanation to the incriminating material placed against him by the Trial Court. The appellant has not denied his presence in the house on that day. How had he brought the deceased down who he alleged to be hanging with the ceiling fan. The thing used to hang with the ceiling fan had not been described by the accused. The complainant husband had seen the wife lying on the bed and her legs were hanging down to the bed.

88. In **Prithipal Singh v. State of Punjab (2012) 1 SCC 10**, this Court relying on its earlier judgment in **State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382**, held as under:-

“53. ... if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond



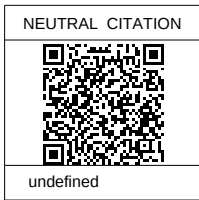
reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. *Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused."*

(emphasis in original)

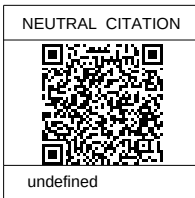
(See also *Neel Kumar v. State of Haryana* [(2012) 5 SCC 766 : (2012) 3 SCC (Cri) 271] and *Gian Chand v. State of Haryana* [(2013) 14 SCC 420 : (2014) 4 SCC (Cri) 226] .)

89. The accused has failed to explain the facts within his knowledge. Had the body been hanging to the ceiling fan and the accused had brought the deceased down and laid her on the bed, then the whole act of the accused was required to be placed on record to consider it as evidence as a circumstance to believe the innocence to the guilt alleged.

90. The missing link as per the learned Senior Advocate Mr. Syed was the non-explanation about the information of

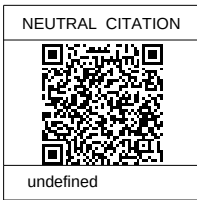


the incident to Indrajit Rathod. It was the contention of learned Senior Advocate Mr. Syed that PW9 had acquired the knowledge of the incident from Indrajit Rathod and non-explanation as to how Indrajit Rathod acquired the knowledge in absence of evidence on record suggesting any person privy to sharing such news is missing link. Such contention raised would have no importance in the present case, since all the witnesses examined, apart from the complainant, had received the information of the incident through other persons. In fact PW2 - the employer of the accused, received the news of the incident through the accused himself. So non-explanation of these circumstances would not be vital. Further, it has come on record that many co-workers of the complainant had gone to GEB hospital and subsequently, to the hospital, where the postmortem was conducted. PW9 had received the information from Indrajit Rathod, while she was at the tuition. So this contention does not become tenable. The non-examination of the child of the complainant as discussed hereinabove also would not be considered as a missing link since it has not come on



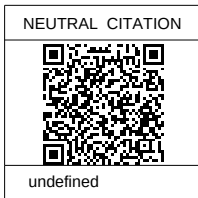
record that when the accused was present in the house of the complainant, with the deceased the minor girl aged about 11 years was also present in the house. No such question has been put to the complainant, that when he came back home on the phone call of the accused, his daughter was present there. So in absence of evidence about the presence of the minor girl at the relevant time of the incident, non-examination of the child as witness cannot be considered as a missing link.

91. To the facts of the case as discussed hereinabove, the presence of the accused, in the house of the deceased and the complainant, is an undeniable fact. The accused himself could not explain the story of suicide by the accused by hanging to the ceiling fan. The FSL report on examination of the place of incident as well as the body of ceiling fan, rules out, any case of hanging. With the postmortem report, the injury on the deceased gets corroborated by way of the evidence of PW2 - the employer of the accused. The doctor had immediately informed that the cause of death was by way of external



pressure. The injury on the head was also shown to PW2. The argument of learned Senior Advocate that the injury on the head could not be definitely proved, also does not become acceptable, since that fact also gets corroborated by way of evidence of PW2. The cause of death, as referred in the postmortem report of neurogenic shock associated with head injury and cardio respiratory arrest due to blockage of upper airway by external pressure, is proved on record. The fact of giving false information by projecting the case as of suicide by hanging also gets proved and thus, the offence under Section 203 of IPC also becomes believable. The accused had tried to cause disappearance of evidence of offence, with the intent to shield himself, had been proved during trial. Thus, offence under Section 201 of the IPC came to be proved.

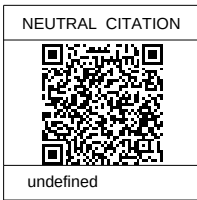
92. The major circumstances have been proved by way of substantive corroborative evidence. The non-production of CCTV camera footage would not become a vital fact in view of the evidence of the eye-witnesses proving accused being seen going towards the house of the



deceased. Further, the accused was found there, he himself had called the complainant and the time of incident, also becomes proved fact, by way of evidence of PW2 - the employer of the accused.

93. We are of the opinion that all the circumstances against the accused have been appropriately proved, bearing evidentiary value. The testimony of the prosecution witnesses support the prosecution case. The motive need not be proved by way of a separate independent evidence. The conduct of the accused itself would be sufficient evidence to believe the motive behind the murder. The prosecution has been successful to prove the case of murder against the accused. The whole chain of events pointing towards the guilt of the accused had been proved during the trial.

94. We do not find any reason to dislodge the observations and the reasonings given by the Trial Court to convict the accused. The guilt of the accused has been absolutely proved. No circumstance has been found to be proved



during the trial to consider the hypothesis of innocence.

We find no reason to interfere with the judgment and order of conviction and sentence.

95. Hence, the appeal is dismissed. The judgment and order of conviction and sentence dated 30.7.2018 passed by the learned 2nd Additional Sessions Judge, Nadiad in Sessions Case no.34 of 2018 is hereby upheld. Registry is directed to send the record and proceedings back to the concerned Trial Court forthwith.

96. Since main appeal is dismissed, Criminal Misc. Application no.3 of 2026 would not survive and is disposed of accordingly.

(GITA GOPI,J)

(L. S. PIRZADA, J)

Maulik