2022 INSC 1079

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 414 OF 2019

MD. ANOWAR HUSSAIN ……. APPELLANT(S)

VERSUS

STATE OF ASSAM ……. RESPONDENT(S)

JUDGMENT

DINESH MAHESHWARI, J.

Table of Contents

Preliminary and brief outline

1. This appeal is directed against the judgment and order dated 19.08.2016 in Criminal Appeal No. 100 (J) of 2013, whereby the Gauhati High Court dismissed the appeal against the judgment and order dated 18.07.2013/25.07.2013, as passed by the Court of Sessions, Goalpara in Sessions Case No. 96 of 2012, whereby the appellant was held guilty of the offence under Section 302 of the Indian Penal Code, 1860[1] and was awarded the punishment of imprisonment for life and fine of Rs. 5,000/- with default stipulations.

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

2.1. The prosecution case, based on circumstantial evidence, has been that the victim, being the 20-year-old wife of appellant, died on 22.10.2010 while residing with the appellant; and that her dead body was brought to the police station by her grandfather PW-1 Md. Akbar Ali, who made an ejahar (Ex. 1) that ever since marriage the deceased was subjected to physical and mental torture by the appellant, who caused her death by inflicting grievous injuries and his family members were involved in the conspiracy. As per the report (Ex. 2), in the inquest carried out at the police station in the presence of informant and other witnesses, injuries were noticed around the eyes, cheeks and neck of the deceased. The First Information Report[2] was registered for offences pertaining to Sections 498-A, 302 and 120-B IPC on the ejahar so made by PW-1

1 'IPC', for short.
2 'FIR', for short.

and the dead body was sent for post-mortem examination. As per the post-mortem report (Ex. 4), the dead body carried several injuries and the cause of death had been asphyxia due to throttling.

2.2. It has been the case of prosecution that the appellant was absconding after the incident and was arrested two days later, at a distant place. After investigation, the charge-sheet was filed against the appellant for the offence punishable under Section 302 IPC whereas the other accused persons were let off for want of positive evidence. One of the peculiar features of the case had been that the private witnesses, PW-1 to PW-6, did not support the prosecution and they essentially suggested that the victim was suffering from illness and died in hospital, where she was taken for treatment. The appellant himself, in his statement under Section 313 of the Code of Criminal Procedure, 1973[3], endorsed the statements so made by PW-1 to PW-6 and maintained that his wife died in the hospital. He also stated that he had gone to bring medicines for himself due to illness and was arrested by the police at Borabara.

2.3. The Trial Court disbelieved the story put forward by the private witnesses and by the appellant about demise of the victim in hospital, particularly with reference to the inquest report drawn at the police station, duly signed by PW-1 to PW-4 and also with reference to the other circumstances, as established in the testimony of the Investigating Officer[4] PW-7 Anowar Hussain as also PW-8 Dr. Madhab Kr. Rahang.

3 'CrPC', for short.
4 'IO', for short.

The Trial Court also found that the accused-appellant came out with a false plea of having gone to the other place to get medicines though no such medicines were found in his pocket; and he failed to explain the cause of homicidal death of his wife, who was living with him prior to her death. Thus, the appellant was held guilty of the offence under Section 302 IPC on the basis of the chain of circumstances proving his guilt and was awarded the punishment as noted above. The High Court also proceeded with the considerations that weighed with the Trial Court while further observing that when the appellant failed to offer proper explanation to the incriminating circumstances or the explanation offered by him was found to be untrue, it became an additional link to complete the chain of circumstances.

2.4. In challenge to the conviction, it has been essentially contended on behalf of the appellant that the consistent assertions of witnesses PW-1 to PW-6 that the deceased died in hospital due to illness cannot be ignored, given that they have not been declared hostile or cross-examined by the prosecution; that the inquest report was unreliable because it was not proved as to from where the dead body was brought to the police station; that the date of arrest of the appellant is questionable with reference to the overwriting in arrest memo; that the place of incident has not been proved because the site plan (Ex. 3) was not enclosed with the charge-sheet; that the medical evidence alone is not decisive of the matter; that non-explanation or falsity of explanation as

required under Section 106 of the Indian Evidence Act, 1872[5], cannot be a ground for conviction; and that the prosecution has failed to prove motive. On the other hand, it is contended on behalf of the respondent-State that when the deceased was the wife of the appellant and they were living together, burden was heavy upon the appellant to explain the cause of unnatural death of his wife, which he had failed to discharge. It has also been contended that the appellant was absconding after the incident and was arrested two days later; and the plea of *alibi* with reference to his going to other place for purchasing medicines has not been proved. It has further been contended that the depositions of PW-1 to PW-6 as regards the alleged illness and hospitalisation of the deceased need to be rejected because of want of corroborative evidence and then, being falsified by the inquest report drawn at the police station. Thus, according to the respondent-State, the concurrent findings recorded in this case against the appellant call for no interference.

Relevant factual and background aspects

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

3.1. As per the prosecution case, the deceased Samina Begum was married to the appellant about 3 years prior to the date of the incident and

5 Hereinafter referred to as 'the Evidence Act'.

was living with the appellant in village Kursapakhari Part II (Kumarkhali), falling within the jurisdiction of Police Station, Lakhipur, District Goalpara, Assam. It has been alleged that on 22.10.2010 at about 4:00 p.m., PW-1 Md. Akbar Ali brought the dead body of Samina Begum to the said Police Station, Lakhipur and lodged an ejahar (Ex. 1) stating that the deceased was the daughter of his nephew and was married to the appellant but, ever since the marriage, the appellant had been inflicting physical and mental torture on her; and that day (i.e., on 22.10.2010) at around 12:00 noon, the appellant assaulted the deceased with lathi and bare hands, as a result of which she died. It was further stated by the informant that the incident was an outcome of the conspiracy hatched by the appellant along with other accused persons, namely Sanowar Hussain (brother of the appellant), Rabia Khatun (mother of the appellant), Zabeda Khatun (sister-in-law of the appellant), and Md. Rajab Ali (relative of the appellant). On the basis of the ejahar so made by PW-1 Md. Akbar Ali, FIR No. 398 of 2010 was registered at the said Police Station, Lakhipur for offences under Sections 498-A, 302, 120-B IPC.

3.2. As per the assertion of the Investigating Officer, PW-7 Anowar Hussain, after registration of FIR, he held the inquest at the police station where he noticed injuries on the eyes and cheeks as also on the neck of the deceased; and drew up the inquest report (Ex. 2) in the presence of four persons. Thereafter, the dead body of the victim was sent for post-mortem examination to Civil Hospital, Goalpara. On 23.10.2010, PW-8 Dr.

Madhab Kr. Rahang conducted the post-mortem examination and, in his report Ex. 4, opined that the cause of death had been asphyxia due to throttling, which was homicidal in nature.

3.3. The Investigating Officer, PW-7 Anowar Hussain, asserted that he visited the place of occurrence and drew the site plan (Ex. 3) but he did not find the accused-appellant there; and later arrested him on 24.10.2010 at Nidanpur market, away from the place of occurrence.

3.4. After completion of investigation, on 29.06.2011, the charge-sheet was filed only against the appellant for the offence under Section 302 IPC while the other persons were let off for want of positive evidence against them. On 16.03.2012, the case was committed to the Court of Sessions. The learned Sessions Judge, Goalpara framed the charge under Section 302 IPC against the accused-appellant who pleaded not guilty and claimed trial.

3.5. In evidence, the prosecution examined eight witnesses and also produced documentary evidence. After the prosecution evidence, the accused-appellant was examined under Section 313 CrPC on 14.05.2013. The accused-appellant did not lead any evidence. Ultimately, after having heard the parties, the Trial Court, by its judgment dated 18.07.2013, convicted the appellant of the offence under Section 302 IPC and then, after having heard the parties on the question of sentence, by its order dated 25.07.2013, awarded the punishment to the appellant of life imprisonment and a fine of Rs. 5,000/- with default stipulations.

4. For the purpose of appreciating the findings recorded in this case, worthwhile it would be to take note of the salient features of the prosecution evidence emanating from the relevant depositions and documents as also the salient features emanating from the stand taken by the appellant in his examination under Section 313 CrPC.

Prosecution Evidence

5. As noticed, the prosecution has examined eight witnesses in this case. PW-1 to PW-6 were the private witnesses whereas the IO was examined as PW-7 and the doctor conducting post-mortem was examined as PW-8.

5.1. As per the prosecution case, PW-1 Md. Akbar Ali, grandfather of the deceased, had taken her dead body to the police station and made the ejahar (Ex. 1), on the basis whereof FIR in question came to be registered. He had also signed the report (Ex. 2) said to have been made after inquest over the dead body at the police station. He, however, came out with a different narrative in his deposition while suggesting illness and `hospitalisation of the deceased. For its relevance, we deem it appropriate to reproduce the entire of his deposition as follows: -

> "Ext. 1 is the Ejahar and Ext. 1(1) is my signature. I know accused Anowar Hussain, who is present in the dock. Deceased Samina Khatun was my granddaughter. She was the daughter of Taher Ali and the wife of the accused. The incident took place about 2(two) years ago. Samina got married to the accused about 2(two) years prior to the incident. She had been leading her conjugal life with her husband in another village. Samina had been suffering from illness since 10/15 days prior to the incident. One day, all of a sudden, I heard that Samina had been taken to hospital. Later I heard that Samina had died. I only know that she was sick and I know nothing else. Their relationship as husband and wife was

> cordial. Going to Lakhipur Hospital I saw Samina's dead body. The Ejahar was written by another person. At that time, I was not mentally stable. As I was asked to put my signature, I put my signature therein accordingly. Later police came and prepared the inquest report on the dead body. I put my signature on it. Ext. 2 is the inquest report and Ext. 2(1) is my signature. I know these much only.
>
> XXXXXXXXXXX
>
> I don't know who had written the ejahar and what was written in it. The houses of Kitab, Sahar, Anser etc. are there near the accused person's house."

5.1.1. The relevant contents of the ejahar (Ex. 1), admittedly lodged by this witness PW-1 Md. Akbar Ali, on the basis whereof FIR in question came to be registered, could also be usefully reproduced as under: -

> "Humble submission is that Must. Samina Begum, daughter of my nephew Sayed Ali of Kantapur, was married off to Anowar Hussain of Kursapakhari Part- II (Kumarkhali) village about 3 (three) years ago. Since after the marriage accused No. 1 had been inflicting physical and mental tortures on her. Today, i.e. on 22/10/10, Anowar Hussain confronted Samina Begum inside his own house and grievously injured her in various parts of the body by assaulting her with lathi and bare hands, as a result of which she died. The said incident was the outcome of the conspiracy hatched by the below named accused persons. Be it mentioned herein that the said incident took place at around 12 noon today.
>
> I, therefore, pray to you to take necessary action after investigating into the matter."

5.2. PW-2 Sofiur Rahman stated that the deceased Samina was granddaughter of his cousin; that on the relevant day at around 12:00 noon, he heard in the market that Samina had died; and that he went to the hospital and saw her dead body there.

5.3. PW-3 Barek Ali also stated that the deceased Samina was his granddaughter. Though he asserted that he heard about Samina having died after consuming poison and he went to hospital but, did not deny one part of the prosecution case that the inquest report (Ex. 2) was bearing

his signature and that after the inquest, the police sent the dead body for post-mortem examination. Owing to its relevance, the entire of his deposition could also be reproduced as follows: -

> "I know the complainant Akbar Ali. I know the accused person present in the dock. Deceased Samina Khatun was the wife of the accused. The incident took place about 1½ years ago.
>
> I heard that as Samina had fallen sick, she had been taken to hospital. She died there. I went to the hospital. I heard that Samina had died as she had consumed poison. By the time I reached the hospital, Samina had died. I know this much only.
>
> Later the complainant, the grandfather of the deceased lodged an ejahar, whereupon police came. I too went there. Ext. 2 is the inquest report. Ext. 2(2) is my signature. Thereafter, Police sent the dead body to the hospital for post-mortem examination.
>
> XXXXXXXXXXX
>
> Deceased Samina was my granddaughter. The house of the accused is about 1½ k.m. away from that of mine. It is in another village. Near the accused person's house there are houses of Zafar, Afzal, Sahar and Kader etc. Kader's house is close by while those of the rest are a little distance away."

5.4. PW-4 Sukum Ali also stated in tandem with other witnesses that Samina died in the hospital but testified to the fact that inquest report (Ex. 2) was prepared by the police bearing his signature and then, the dead body was sent by the police to the hospital for post-mortem examination. His deposition could also be usefully reproduced as under: -

> "I know complainant Akbar Ali. I know accused Anowar who is present in the dock. The deceased was the wife of the accused. The occurrence took place about 2(two) years ago.
>
> Samina died in the hospital. Villagers said that Samina had been taken to hospital. I went to the hospital and found her dead. The complainant filed a case in this regard.
>
> Police came and prepared inquest report on the dead body. I put my signature in the inquest report.

> Later police sent the dead body to hospital for post mortem examination. Ext. 2 is the inquest report and Ext. 2(3) is my signature therein.
>
> XXXXXXXXXXX
>
> Declined."

5.5. PW-5 Dilbar Hussain and PW-6 Musstt. Moimma Bewa stated in their depositions that they heard about Samina having been taken to hospital and having died in the hospital.

5.6. As noticed, the aforesaid witnesses PW-1 to PW-6 deviated from the prosecution case and asserted that the victim lady fell ill, was taken to the hospital, and she died in the hospital. However, giving ejahar (Ex. 1) by PW-1 and holding of inquest at the police station with signatures of witnesses on the inquest report (Ex. 2) are the facts duly established from the relevant statements. We shall examine these and cognate aspects at the relevant stage later.

5.7. At this stage, it would be appropriate to take note of the entire of the testimony of the Investigating Officer PW-7 Anowar Hussain, who stated as under: -

> "On 22/10/2010, I was on duty in Lakhipur Police Station. On that day, upon receipt of an ejahar from one Akbar Ali, the then Officer-in-charge of Lakhipur Police Station registered a case and entrusted me with the charge of its investigation. Ext. 1(2) is the signature of the then O/C of Lakhipur Police Station Kamal Chandra Seal, which I am familiar with.
>
> The dead body of Samina Khatun was also brought (to P.S.) at the time of lodging the Ejahar. The deceased was the wife of accused Anowar. I held inquest on the dead body. Ext. 2 is the inquest report and Ext. 2(4) is my signature.
>
> I sent the dead body to Goalpara Civil Hospital for post mortem examination.

I visited the place of occurrence and examined the witnesses. I drew a sketch map of the place of occurrence. Ext. 3 is the said sketch map (under objection) Ext. 3(1) is my signature (under objection).

When I went to the place of occurrence I did not find the accused there. I enquired about him but nobody could say anything. Later I heard that the accused was roaming at Nidanpur. I went there and arrested the accused. I apprehended the accused at Nidanpur market, brought him to the police station and formally arrested him on 24/10/2010. Later the accused person was forwarded to the court.

Thereafter, the post mortem report was collected and on completion of investigation, I filed the charge sheet against accused Anowar Hussain for commission of offence punishable u/s 302 I.P.C.

Ext. 4 is the said charge sheet and Ext. 4(1) is my signature therein.

While holding inquest, I saw injuries in the eyes and cheeks. I also saw injury in the neck of the deceased.

XXXXXXXXXXX

In the inquest report there is no detailed descriptions of the injuries. The accused was brought (to P.S.) from Nidanpur market. The name of the person, who gave the information, is not mentioned in the diary. The incident took place around 12 noon on 22/10/2010 and the Ejahar was received at 4 p.m. The place of occurrence is about 5/6 km away from the police station. One can come there on foot or by a bicycle.

At 10 a.m. on 23rd day of the month I went to the place of occurrence, but there is no specific mention in the case diary as to how I reached there. H.G. Dilwar Hussain accompanied me.

The complainant brought the dead body along. There is no specific mention in the case diary as to how it was brought and at what time. Ext. 3 was not enclosed with the charge sheet. GD Entry was made, but no certified copy of the same was enclosed with the case diary.

I hold inquest in the police station. At the time of inquest 4 (four) persons were present. I brought those persons from the road.

The village road is there to the north of the place of occurrence and beyond that there is a house. It is not mentioned whose house it is. There is paddy field to the south. There is no mention as to whose house is there in the further south thereof. Abdulla’s house is in the east and a betel nut plantation is there in the west. There is no mention whose house is there next to that.”

5.8. PW-8 Dr. Madhab Kr. Rahang had conducted the post mortem and opined that the cause of death was asphyxia as a result of throttling, which was homicidal in nature. He testified to the post-mortem report (Ex. 4) wherein he had reported on the condition of the dead body, *inter alia, as* under: -

i) Bleeding from both ears.

ii) Tongue was protruded.

iii) Multiple petechial haemorrhages in eyes and face.

iv) Crescentic abrasions on both sides of neck.

v) Bruising and ecchymosis in front of both sides of neck (finger marks).

vi) Tear of larynx and muscles in front and side of the neck.

vii) Laceration of larynx.

viii) Both lungs were engorged and congested.

ix) Right heart was distended with blood while left was empty.

x) Petechial haemorrhages in liver, spleen and kidneys.

5.8.1. This witness PW-8 Dr. Madhab Kr. Rahang stated in his cross-examination as under: -

> "I have not mentioned the number of marks of finger in my post mortem report. Gristly mark signifies nail mark. Trachea is a separate part and larynx is a separate part. Trichoid bone has separate component. I had not dissected cardiac artery. I had observed cardiac arteries; but there was no finding record of any abnormality. If trachea is blocked, then the person may die. Death may occur in the event of blockade of Vegas nerve. It is not a fact that without dissection of carotid nerve, it cannot be ascertained if there was any pressure of the Vegas. I have not dissected any part of the neck to give the finding. Colour of ecchymosis was not mentioned.
>
> It is not a fact that such kind of death may occur by external force of handle of a tube-well or through falling object on the neck. It is not a fact that death was not due to strangulation. It is not a fact that that I have not given proper finding."

Stand of the appellant

6. In his examination under Section 313 CrPC, the circumstances appearing from the evidence led by the prosecution were put to the appellant. While he denied as false the allegations about his having caused the death of his wife Samina and also denied the assertions made by PW-7, the IO and PW-8, the doctor but then, he specifically stated that Samina died in hospital and for that matter, stated his agreement with the assertions made by PW-1 to PW-6. The appellant also stated that he was arrested at Borabara where he had gone to bring medicines for himself, as he was ill at that time. The relevant question and answers in the examination of the accused-appellant under Section 313 CrPC read as under: -

> "*** *** ***
>
> Q2 PW1 Akbor Ali is the grandfather of the deceased and according to him Samina your wife was suffering from illness. On a fine morning he heard that Samina your wife was taken to hospital Subsequently he came to know that Samina had died in the Hospital. What do you have to say in this regard?
>
> Ans: Yes, Samina died at hospital.
>
> Q3 PW2 is Sofior Rahman and in his evidence states that on the eventful day he went to a weekly market. At noon hour he came back home and heard Samina your wife had died. He went to the hospital and had seen the dead-body there. What do you have to say in this regard?
>
> Ans: Yes.
>
> Q4 PW 3 is Barek Ali and according to him Samina your wife was taken to hospital as she fell ill. Subsequently he came to know that Samina your wife died at hospital. He went to the said hospital and had seen the dead-body. What do you have to say in this regard?
>
> Ans. Yes.
>
> Q5 *** *** ***

Q6 *** *** ***

Q7 *** *** ***

Q6[6] PW7 the IO states that while he visited your house i/c with this case you were not found there. No body could tell your whereabouts. Subsequently he came to knows that you were roaming at Nijampur the IO went there and arrested you from the road of Nijampur. What do you have to say in this regard?

Ans. I was arrested by police not at Nijampur but at Borabara a little distance away from there; I was there to bring medicines for myself as I was ill at that time.

*** *** ***"

6.1. The accused-appellant declined to lead any evidence and hence, the matter proceeded for hearing and ultimately, led to the impugned judgment and order dated 18.07.2013/25.07.2013.

Trial Court found the appellant guilty and awarded life imprisonment

7. Having taken note of the major features of the evidence on record and the stand of the prosecution witnesses as also of the accused-appellant, we may summarise the relevant aspects of the decision of the Trial Court and its process of reasoning.

7.1. In the first place, the Trial Court noticed the point calling for determination in the matter, i.e., as to "*whether the accused committed murder by intentionally causing the death of his wife Samina Khatun, on the eventful day i.e. 22.10.2010, at about 12:00 noon, at village Kurshapakhri Part II (Kumarkhali) in his house?*"

7.2. After taking into consideration the testimony of PW-8 who had conducted post-mortem examination, the Trial Court observed that it was clearly established that the cause of death was asphyxia due to throttling,

6 This question, though number 8 in continuity, has been mentioned as 'Q6' in the original.

which was ante-mortem and homicidal in nature; and though the defence had cross-examined PW-8 on certain points, but had failed to derange these findings. The Trial Court observed and held as under: -

> "…The defence cross examined this doctor on some point; but it has failed to disrupt any finding of the doctor on the matter that the deceased died due to asphyxia as a result of throttling. I have drawn a serious attention to this piece of evidence and am not inclined to take a contrary view as regards the cause of death of the deceased. It was done by throttling. Now, the question is who the author of this crime. To seek answer of this query, we have to revert back to the evidence on record."

7.3. Coming to the question as to who was the author of this crime, the Trial Court, while dealing with the testimony of PW-1, noticed that though he alleged in the FIR that the appellant committed the murder of his granddaughter but, took a somersault while deposing in the Court and stated that being mentally unstable, he acted to the dictates of others and affixed his signature on this piece of paper. The Trial Court also observed that this witness attempted to give a different direction to the prosecution story by taking the stand about illness and hospitalisation of the victim before her death. The Trial Court deduced that this witness was apparently won over, particularly when his narrative was running counter to the evidence of the doctor conducting post-mortem examination, who had categorically stated that the victim died due to throttling. The Trial Court also noticed that the other (private) witnesses had deposed more or less on the same lines, may be in slightly different directions; and found no reason to accept their suggestion about demise of the victim in hospital due to illness, for obvious inconsistency with the initial version in

the FIR as also for want of clarification of basic questions as to who, if at all, brought the victim to hospital and when.

7.4. Thereafter, the Trial Court analysed the testimony of PW-7 Anowar Hussain, the Investigating Officer who asserted that on 22.10.2010, the FIR and dead body were received at the police station simultaneously; that he carried out inquest, prepared the inquest report (Ex. 2), and dispatched the body for post-mortem examination; and that subsequently, he visited the site of incident, examined material witnesses, and drew up sketch map of the site (Ex. 3). The Trial Court also rejected the objection of defence against acceptance of the site plan (Ex. 3) in evidence while observing that the defence had failed to satisfy as to why the said material piece of evidence, be not brought on record. The Trial Court further noticed from the testimony of PW-7 that when he visited the place of occurrence, he did not find the appellant; and upon receiving the information that the appellant was roaming at Nidanpur, he reached there and took the appellant into custody.

7.5. The Trial Court also took note of the fact that in his statement under Section 313 CrPC, the appellant took the plea that he was ill at that time and had gone to Nidanpur to get some medicines but no medicine was found by PW-7 in his pocket. The Trial Court observed that the plea taken by the appellant was nothing but a lame excuse; and that the appellant had also failed to specify as to who took his wife to hospital, if at all she had fallen ill.

7.6. Thus, after taking into account the overall evidence on record and after appreciating all the surrounding factors, the Trial Court concluded that the prosecution had been able to establish the guilt of appellant for commission of offence in question beyond any doubt. The relevant observations and findings of the Trial Court read as under: -

> "16. Now, we come to the most material part of the evidence. Here, the I.O. has stated, in no uncertain terms that when he visited the place of occurrence, he did not find the accused thereon. From the evidence of other witness, it somehow comes to light that the victim was shifted to hospital in the morning hour. Now, the question is who had shifted her. All the witnesses deposed in different directions; but the justice cannot be left to be defeated, even if all attempts are made by the witnesses to derail the course of justice. Now, reverting back to the evidence of PW-7, it comes to light that he made enquiries as regards disappearance of this accused from his house; but none could furnish any satisfactory information as to why he was missing from his house. Subsequently, the I.O. came to know that the accused was roaming at Nidanpur. He immediately left for that place and on reaching there, he found the accused roaming aimlessly at that place and he, immediately, brought the accused under his custody. In the instant case, none had seen the actual occurrence. From the medical evidence it stands amply established that the deceased/wife of the accused suffered homicidal death. Her neck was throttled and she was done to death.
>
> 17. From Ext.2, the inquest report, it appears that the I.O. has noted that there appeared spot around the neck of the deceased ad the body was stiff. The doctor while performing post mortem examination, has found that there was rigor mortis present there on the whole body. There was also bleeding from both ears. He also noted protruded tongue. Multiple petechial haemorrhge were seen in eyes and face. Some bruising and eccymosis were also found on both sides of the neck. The fact that the death was caused by act of throttling stands abundantly established in the instant case. The accused, during the whole trail, kept his mouth shut. There are cogent and convincing evidence on record to hold that both the accused person and the victim were residing in the same house together. Death occurred to the wife of the victim. The parents and other members of the house were all present there. None deemed it fit to inform the accused as regards her falling seriously ill if ever there was any tinge truth in it. Even the accused did not elaborate on the matter as to who took the victim to hospital after ever she had fallen ill. The whole matter has been

> stage-managed. The involvement of the accused in this offence is beyond doubt and is writ large on the face of record. He was roaming here and there somewhere else. He took the plea in his examination u/s 313 Cr.P.C. that he was ill at that time. So, he went to Nidanpur to get some medicines; but the I.O. had not found any medicine in his pocket. Even this plea remains a lame excuse. Just to save the skin from this heinous offence, the accused has taken such plea. The death of his wife occurred in an unnatural condition. He remained unmoved. He even did not throw light as to what had happened prior to her death. It did no good to the accused to remain taciturn on the entire matter. Death occurred due to throttling. The accused must explain what happened at that time. His keeping mum, during the entire trail, points to his guilty conscience. Upon overall analysis of the entire evidence on record in its right perspective, this court is constrained to hold that the prosecution has been able to establish the guilt of the accused for commission of offence u/s 302 IPC beyond all shadows of doubt. Hence, the accused is found guilty and he is accordingly convicted."

7.7. At the time of hearing on the question of sentence, the Trial Court noticed an application on behalf of the accused-appellant for re-examining PW-8, the doctor conducting post-mortem, for correction of certain expressions occurring in his deposition. The Trial Court found such expressions not having any serious effect on the prosecution case as regards the cause of death. It was also argued before the Trial Court that there was no *mens rea* on the part of the appellant and the offence may be scaled down to Section 304 Part II IPC. However, this submission was found unacceptable by the Trial Court looking to the overall circumstances including the cause of death of the victim and the conduct of the appellant, where he fled from the house and offered no explanation as to the cause of death of his wife. Finally, the Trial Court, by its order dated 25.07.2013, awarded the punishment to the appellant of life

imprisonment and a fine of Rs. 5,000/- with default stipulations. The relevant observations and conclusion of the Trial Court read as under: -

> "22. I have very attentively gone through the case record and have taken into account the submission of the learned counsel on the matter that, the accused, if ever be held guilty, he should be sentenced u/s 304(2); but I do not agree on this matter. There are abundant evidence on record to hold that it was an unnatural death. Death was caused to the effect of strangulation and it happened in the house of the accused. But the accused fled away there-from and he had no explanation worth his name how death occurred in the house; he remained silent throughout the entire trial and he had even not taken a plea that it was caused by some other persons. The other witnesses tried to derails the course of justice by trying to confuse the court on different pleas. Some of them took the plea that the victim died of consumption of poison, other pleaded that she was suffering from diseases; but there is no evidence on record on that point. Rather the evidence so surfaced upon critical analysis of the entire evidence on record is justified to the fact that it was none other than accused who caused death of his wife in his house and after causing this heinous offence he escaped there-from and was loitering in that area i.e. at Nidanpur where he was finally detected by the police and rounded up. The prosecution has succeeded to establish the guilt of the accused for commission of offence u/s 302 IPC. There is no mitigating circumstance to deal leniently in favour of the accused scaling down the offence to any other section. Having found abundant evidence on record, this court finds him guilty for committing the offence u/s 302 IPC and sentence him life imprisonment and a fine of Rs. 5,000/-, i/d to suffer RI for three months."

High Court dismissed the appeal filed by the appellant

8. Aggrieved by the judgment and order aforesaid, the appellant filed a criminal appeal, being Criminal Appeal No. 100 (J) of 2013, before the Gauhati High Court that has been considered and dismissed by the High Court by its impugned judgment and order dated 19.08.2016.

8.1. The High Court noticed the fact that the Trial Court had convicted the appellant mainly relying upon the post-mortem examination report as also the fact that no plausible explanation was given by the appellant regarding the homicidal death of his wife. The High Court again took note

of the essential features of the evidence and particularly referred to the fact that the inquest report (Ex. 2) was drawn at the police station itself bearing the signatures, *inter alia,* of PW-1, PW-2, PW-3 and PW-4. The story as put forward by these and other private witnesses about the death of Samina in hospital due to illness was rejected with reference to the fact that there was no corroborative evidence in that regard and on the contrary, the post-mortem examination report (Ex. 4) falsified the story that she had died due to illness. The High Court specifically observed that if at all Samina had died in the hospital due to illness, there was no occasion for the aforesaid witnesses to carry her dead body to the police station.

8.2. Having said so, the High Court referred to a decision of this Court in ***Trimukh Maroti Kirkan v. State of Maharashtra*****: (2006) 10 SCC 681**, on the principle that when the incriminating circumstances are put to the accused and the accused either offers no explanation or his explanation is found to be untrue, it becomes an additional link in the chain of circumstances against him. The High Court found that, in the present case, when the appellant and his wife were living together and the appellant-husband failed to offer plausible explanation about the homicidal death of his wife and there was no evidence as regards her alleged illness or demise in hospital, it was a strong circumstance that he alone was responsible for the crime.

8.3. The High Court, therefore, dismissed the appeal while observing, *inter alia*, as under: -

> "9. As seen above, Akbar Ali (PW-1) not only carried the dead body of Samina to the Police Station, he also made the ejahar alleging that appellant had tortured her to death. And at the Police Station itself, Investigating Officer Anowar Hussain (PW-7) made inquest report exhibit 2 on the dead body, which even bears the signatures of Akbar Ali (PW-1), Barek Ali (PW-3) and Sukum Ali (PW-4). But during the trial, all these witnesses changed their versions and deposed that Samina died in the hospital due to illness. This, perhaps, they did because of their relations with the appellant. Similar is the evidence of Dilbar Hussain (PW-5) and Mustt. Moimma Beuwa (PW-6). They too have testified that Samina died in the hospital due to illness. But, no record of any hospital was produced in defence by the appellant to even suggest that Samina died in the hospital due to illness. On the contrary, post mortem examination report of Dr. Madhab Kumar Rahang (PW-8) completely falsifies the defence of appellant that Samina died due to illness. Not only this, Anowar Hussain (PW-7) has categorically testified that inquest report on the dead body of Samina was made at the Police Station, which bears the signatures of Akbar Ali, Barek Ali and Sukum Ali. These witnesses have not denied their signatures in the inquest report. Had Samina died in the hospital due to illness, there was no occasion for Akbar Ali, Barek Ali and Sukum Ali to carry her dead body to the Police Station.
>
> 10. The Supreme Court in the case of Trimukh Maroti Kirkan vs. State of Maharashtra (2006) 10 SCC 681 has again approved the well settled principle that when an incriminating circumstance is put to the accused and that accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. In this case, the Supreme Court has also held that where a husband is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling house where the husband also normally resided and if the husband does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it was a strong circumstance pointing that he alone was responsible for the commission of crime.
>
> 11. The appellant has not disputed that at the time of incident Samina lived with him in the same dwelling house. Samina died due to throttling and her death was homicidal in nature. She also had injuries around her neck, apart from other injuries. No

> plausible explanation has been given by the appellant regarding her homicidal death. He has also not been able to produce even iota of evidence that she was suffering from any illness or died in the hospital due to illness.
>
> 12. We therefore find no merit in this appeal. The appeal is accordingly dismissed."

Rival Submissions

9. Assailing the judgment and order aforesaid, learned counsel for the appellant has put forward a variety of submissions to argue that the appellant has been convicted not on legal evidence but only on suspicion. Learned counsel would argue that the case of the prosecution is based on circumstantial evidence but, the only circumstances relied upon by the Courts are of medical opinion and non-explanation or purportedly false explanation by the appellant. These circumstances, according to the learned counsel, do not justify a conclusion on the guilt of the appellant beyond reasonable doubt.

9.1. The learned counsel has strenuously argued that the date of arrest of the appellant remains questionable because, as per the version of PW-7 Investigation Officer, he was arrested on 24.10.2010 but, the arrest memo shows that he was arrested on 22.10.2010 and then, the said date was conveniently altered to 23.10.2010 and the same was endorsed by learned Chief Judicial Magistrate on 24.10.2010.

9.2. The learned counsel has also submitted that the place of incident has not been proved in this case as the prosecution has only relied upon the evidence of PW-7 that he inspected the place of incident and had drawn the site map but, in the case diary, there is no direct mention as to

how did he reach there; and then, the Ex. 3 (site plan) was not enclosed with the charge-sheet. Even though an objection was raised before the Sessions Court, it was simply brushed aside by stating that the defence had failed to satisfy as to why this material piece of evidence be not brought on record. The learned counsel has further submitted that PW-7 did not depose that Ex. 3 was prepared in the presence and as per the information of the appellant.

9.3. Learned counsel for the appellant has further emphatically submitted that all the independent witnesses, PW1 to PW6, have spoken in one voice that the deceased died in hospital due to illness, and thereby did not support the case of prosecution; and the prosecution neither declared them hostile nor cross-examined them to prove that they were speaking falsehood or were won over.

9.4. While assailing the evidence concerning inquest report (Ex. 2), the learned counsel has argued that there is no evidence on record as to from which place the dead body was carried to the police station; neither PW-1 has stated any such fact nor the IO PW-7 has spoken about the place from where the dead body was carried. This missing link, according to learned counsel, operates against the prosecution case.

9.5. Learned counsel for the appellant has further argued, with reference to the principles laid down in ***Sharad Birdhichand Sarda v. State of Maharashtra*: (1984) 4 SCC 116** that the Courts ought not to place much reliance on the medical evidence as the same is not of

conclusive proof and is of opinion only. In this regard, the learned counsel has further relied upon the decisions in ***Balaji Gunthu Dhule v. State of Maharashtra*****: (2012) 11 SCC 685** and ***Nagendra Sah v. State of Bihar*****: (2021) 10 SCC 725**.

9.6. Further, while relying upon the decisions of this Court in ***Gargi v. State of Haryana*****: (2019) 9 SCC 738; *Shivaji Chintappa Patil v. State of Maharashtra*: (2021) 3 SCALE 384; *Satye Singh & Anr. v. State of Uttarakhand*: (2022) 3 SCALE 534;** and ***Nagendra Sah*** (supra), it has been submitted that the so-called non-explanation or falsity of explanation as required under Section 106 of the Evidence Act, by itself, cannot be a ground of conviction.

9.7. The learned counsel has submitted that as per the prosecution case, the deceased was continuously tortured by the appellant but, in the absence of the proof of this allegation, prosecution ought to have proved the motive behind the alleged incident; and while relying on ***Shivaji Chintappa Patil*** (supra) as also ***Anwar Ali and Anr. v. State of Himachal Pradesh*****: (2020) 10 SCC 166** and ***Nandu Singh v. State of Madhya Pradesh (Now Chhattisgarh)*****: Criminal Appeal No. 285 of 2022,** decided on 25.02.2022, it has been argued that motive having not been proved, conviction of the appellant remains unsustainable.

9.8. The learned counsel has further submitted that if two views are possible, as found in the present case, then the view in favour of the accused (appellant herein) must be accepted, by placing reliance on a

few decisions like that in ***Jose Alias Pappachan v. Sub-Inspector of Police, Koyilandy and Anr.*****: 2016 (10) SCC 519.** The learned counsel has also referred to the decision in ***Sarwan Singh v. State of Punjab*****: AIR 1957 SC 637** to submit that suspicion, howsoever strong, cannot take the place of proof.

10. *Per contra,* learned counsel for respondent-State has emphatically submitted that the prosecution has produced relevant evidence and the circumstances have been established beyond reasonable doubt so as to complete the chain of circumstances and ruling out any other hypothesis except the guilt of the appellant.

10.1. Learned counsel for respondent-State has relied upon the post-mortem report (Ex. 4) read with the deposition of PW-8 and the inquest report (Ex. 2) while submitting that there were ante-mortem injuries on the body of the deceased and the cause of death was asphyxia due to throttling. Further, while placing reliance on the testimony of PW-7, it has been argued that the appellant was absconding after the incident and was arrested from a different location after two days; and that the appellant miserably failed to prove his plea of alibi that he was ill and had gone to purchase medicine.

10.2. Learned counsel for respondent-State has forcefully submitted that the false explanation given by the appellant that his wife died in the hospital due to illness becomes an additional link to complete the chain of circumstances, as the appellant failed to adduce any evidence of hospital

record concerning the treatment of the deceased or discharge/death certificate, to prove that his wife indeed died in the hospital. In this regard, reliance has been placed on the said decision in ***Trimuk Maroti Kirkan v. State of Maharashtra*****: (2006) 10 SCC 681.**

10.3. Learned counsel has further submitted that in case the death of victim would have occurred due to an illness and/or in the hospital, her dead body would not have been taken to the police station for lodging the FIR nor the inquest would have revealed the injuries as reported in the inquest report (Ex. 2). Moreover, in the present case, when the offence has been committed in the matrimonial home where the appellant and the deceased were residing together, the burden under Section 106 of the Evidence Act, was heavy upon the appellant to explain as to how the victim sustained so many grievous injuries and died because of throttling. The emphasis of learned counsel has been that when the appellant asserted that the deceased died due to illness in hospital, the burden to prove the facts regarding illness and hospitalisation was upon the appellant under Section 106 of the Evidence Act. Furthermore, when the appellant stated in his statement under Section 313 CrPC that he was ill and had gone to Nidanpur to purchase medicines for himself, the burden to prove his alibi was also upon the appellant, but the explanation provided by him was found to be false.

10.4. The learned counsel for respondent-State has again relied upon ***Trimuk Maroti Kirkan*** (supra) to submit that in the cases of

circumstantial evidence, when offence is committed in the confines of a home, though the initial burden would be on the prosecution but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The learned counsel has also relied upon several other decisions, like ***Alber Oraon v. State of Jharkhand*: (2014) 12 SCC 306** and ***Sudru v. State of Chhattisgarh*: (2019) 8 SCC 333.**

10.5. The learned counsel for respondent-State has placed reliance *on* ***Ujjagar Singh v. State of Punjab*: (2007) 13 SCC 90** and ***Vivek Kalra v. State of Rajasthan*: (2014) 12 SCC 439** to submit that where chain of circumstances establishes beyond reasonable doubt that it is the accused who committed the offence, the Court cannot hold that absence of motive to exonerate the accused.

10.6. The learned counsel has submitted that in view of appellant's admission under Section 313 CrPC about his arrest, the contention that the arrest of the appellant after the incident is questionable, has no foundation to stand upon. The learned counsel has further refuted the contention that the place of occurrence is not proved. In this regard, it has been argued that PW-7 has clearly deposed that after receiving FIR, he prepared the inquest report at the police station itself, which was witnessed by four persons and thereafter, he visited the place of occurrence, examined witnesses and drew up the site plan (Ex. 3) of place of occurrence and signed thereon. PW-7 also deposed that he did

not find the appellant at the place of occurrence and could be arrested only from Nidanpur market on 24.10.2010. The learned counsel has further submitted that the site map, at point 'Ka', clearly indicates the place of occurrence to be the house of the appellant. Although an objection of the site plan not accompanying the charge-sheet has been taken by the defence, but it is seen that the same is duly exhibited in evidence and is the part of original record before the Courts. Moreover, the Investigating Officer categorically described the place of occurrence in his cross-examination. Therefore, according to the learned counsel, objection to Ex. 3 was rightly rejected by the Trial Court while finding that the appellant and the deceased resided in the same house together and the death of deceased occurred inside the house.

10.7. While concluding, learned counsel for the respondent-State has submitted that the present case is of clinching evidence, which has duly been considered by the two Courts, while recording concurrent findings as regards the guilt of the appellant, in committing the murder of his deceased wife and hence, no interference is called for.

The scope and width of these appeals

11. As noticed, the Trial Court and the High Court have concurrently recorded the findings in this case that the prosecution has been able to successfully establish the chain of circumstances leading to the only conclusion that the appellant is guilty of the offence of murder of his wife. The concurrent findings leading to the appellant’s conviction have been

challenged in this appeal as if inviting re-appreciation of entire evidence on its contents as also its surrounding factors. Though the parameters of examining the matters in an appeal by special leave under Article 136 of the Constitution of India have been laid down repeatedly by this Court in several of the decisions but, having regard to the submissions made in this case, we usefully reiterate the observations in the case of ***Pappu v. The State of Uttar Pradesh:*** **2022 SCC OnLine SC 176** wherein, after referring to Articles 134 and 136 of the Constitution of India and Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 as also with a detailed reference to the relevant decisions, this Court has summed up the subtle distinction in the scope of a regular appeal and an appeal by special leave in the following words: -

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

11.1. Keeping the principles aforesaid in view, we may examine if the concurrent findings call for any interference in this case while reiterating that wholesome reappreciation of evidence is not within the scope of this

appeal, even though we have scanned through the entire evidence in order to appropriately deal with the contentions urged before us.

The principles applicable to this case

12. Learned counsel for the appellant has endeavoured to argue that there had been several shortcomings and lacunae in the prosecution case and that the relied upon factors, including the medical evidence and the so-called falsity of explanation of the appellant, are not providing such links in the circumstances which may lead to the finding on the guilt of the appellant. While dealing with such submissions, we may usefully take note of the basic principles applicable to this case, as noticeable from the relevant cited decisions.

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

> "**152**.....It may be useful to extract what Mahajan, J. has laid down in *Hanumant case:*
>
> > "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a

chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra*[7] where the observations were made:

> "Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

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

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in *King* v. *Horry* [1952 NZLR 111] thus:

7 (1973) 2 SCC 793.

> "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction..."""

12.1.1. It is also pertinent and useful to notice that in the said case of ***Sharad Birdhichand Sarda***, this Court also enunciated the principles for using the false explanation or false defence as an additional link to complete the chain of circumstances in the following terms: -

> "**158**. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in *Deonandan Mishra* v. *State of Bihar*[8] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case……..
>
> **159**. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:
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> (*1*) various links in the chain of evidence led by the prosecution have been *satisfactorily proved*,
>
> (*2*) the said circumstance points to the guilt of the accused with reasonable definiteness, and
>
> (*3*) the circumstance is in proximity to the time and situation.
>
> **160**. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise……."

8 AIR 1955 SC 801 : (1955) 2 SCR 570, 582 : 1955 Cri LJ 1647.

12.2. In the case of ***Balaji Gunthu Dhule*** (supra), where the High Court did not accept the evidence of the alleged eye-witnesses but proceeded to principally rely on the post-mortem report while recording conviction, this Court did not approve such an approach, while observing in the referred paragraph as under: -

> **"9.** The High Court has also relied upon the post-mortem report of the doctor. In our opinion, since the entire evidence of the eyewitnesses has not been accepted by the High Court, it could not have merely relied upon the post-mortem report to convict the appellant for an offence under Section 302 IPC……."

12.3. In the case of ***Gargi*** (supra), where the appellant was held guilty of murder of her husband by the two Courts essentially with reference to the operation of Section 106 of the Evidence Act, this Court pointed out that this provision does not absolve the prosecution of its primary burden in the following words: -

> "**33.1.** Insofar as the "last seen theory" is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The trial court and the High Court have proceeded on the assumption that Section 106 of the Evidence Act directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden…"

12.4. In the case of ***Shivaji Chintappa Patil*** (supra), this Court reiterated the principles that Section 106 of the Evidence Act does not absolve the prosecution of discharging the primary burden; and that want of explanation or falsity of explanation in the statement under Section 313 can only be used as an additional circumstance when the prosecution has

proved the other circumstances leading to no other conclusion but that of guilt of the accused. In that case, one of the significant features had been that as per the post-mortem report, the cause of death of the victim was asphyxia due to hanging but, admittedly, there were no marks on the body of the victim which could suggest violence or struggle; and the medical expert himself had not ruled out the possibility of suicidal death. This Court observed and said as under: -

> **"22**. …Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof would lie upon the accused.
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> *** *** ***
>
> **24.** Another circumstance relied upon by the prosecution is, that the appellant failed to give any explanation in his statement under Section 313 Cr.P.C. By now it is well-settled principle of law, that false explanation or non-explanation can only be used as an additional circumstance, when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused. However, it cannot be used as a link to complete the chain. Reference in this respect could be made to the judgment of this Court in *Sharad Birdhichand Sarda (supra*)."

12.5. In ***Satye Singh*** (supra), where the prosecution failed to prove the basic facts as against the accused, this Court, again, emphasised that Section 106 of the Evidence Act does not relieve the prosecution of its primary duty to prove the guilt of the appellant as follows: -

> "**15.** …the Court is of the opinion that the prosecution had miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance placed by learned advocate Mr. Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 is not intended to relieve the

> prosecution from discharging its duty to prove the guilt of the accused…."

12.6. In the case of ***Nagendra Sah*** (supra), the relevant background aspects were that the appellant's wife died due to burn injuries on 18.11.2011 whereupon, Unnatural Death Case was registered. According to the post-mortem report, the cause of death was asphyxia due to pressure around neck by hand and blunt substance. Later, as late as on 25.08.2012, the FIR was registered for the offence under Section 302 IPC and ultimately, the appellant was tried and convicted of the offences under Sections 302 and 201 IPC. This Court, however, noticed the factors that there was no explanation by the prosecution for the inordinate delay in registering the FIR; that none except the official witnesses supported the prosecution case; that there was no evidence to suggest that the relationship between the appellant and the deceased was strained in any manner; and that the appellant was not the only person residing in the house where the incident took place. This Court, thus, held that the facts established were not consistent with only one hypothesis of the guilt of the appellant. In such a background, this Court observed that conviction could not have been based only on the post-mortem report; and when the prosecution failed to establish the chain of circumstances, the failure of the accused to discharge the burden of Section 106 of the Evidence Act was not relevant at all. This Court and observed and held as under: -

> "**22.** Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special

knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.

24. As we have already held in this case, the circumstances established by the prosecution do not lead to only one possible inference regarding the guilt of the appellant-accused.

25. Therefore, what survives for consideration is only an opinion of the medical practitioner who conducted autopsy and gave a report on the cause of death. As held in *Balaji Gunthu Dhule*[9], only on the basis of post-mortem report, the appellant could not have been convicted of the offence punishable under Section 302 IPC and consequently for the offence punishable under Section 201 IPC.

26. Moreover, there is no explanation brought on record by the prosecution for the delay in registering first information report. Though the post-mortem report was available on 18-11-2011, first information report was belatedly registered on 25-8-2012.

27. Therefore, we are of the considered view that the guilt of the accused has not been established beyond a reasonable doubt…."

12.7. The case of ***Trimukh Maroti Kirkan*** (supra) as relied upon by the High Court and referred to by learned counsel for the respondent carry at least one significant feature akin to the present case. Therein, the accused was charged of the murder of his wife; there had been allegations of ill-treatment of the deceased-wife by the accused-husband; and though the victim had been killed by strangulation, the information given to her parents was that she had died on account of snakebite and

9 (2012) 11 SCC 685 (as referred to hereinbefore).

all in the village were also told that the deceased had died on account of snakebite. After taking note of the facts of the case, this Court exposited on the principles governing the assessment of circumstantial evidence, the operation of Section 106 of the Evidence Act, and the effect of want of necessary explanation or giving of false explanation by the accused, *inter alia*, in the following passages: -

> **"12.** In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.
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> *** *** ***
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> **14.** If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland* v. *Director of Public Prosecutions*[10] — quoted with approval by Arijit Pasayat, J. in *State of Punjab* v. *Karnail Singh*[11].) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him…….

10 1944 AC 315: (1944) 2 All ER 13 (HL).
11 (2003) 11 SCC 271 : 2004 SCC (Cri) 135.

> **15.** Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.
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> *** *** ***
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> **21.** In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court."

12.8. The case of ***Sudru*** (supra) had been the one where the appellant was charged of the murder of his son in his house; and the principal prosecution witnesses, including wife of the appellant, turned hostile to the prosecution but, the facts did come out of their testimony that the deceased was left alone in the company of the appellant and the next day, the deceased was found dead. Taking note of the salient features of the case and operation of the requirements of Section 106 of the Evidence Act, this Court observed, as regards consideration of the relevant part of evidence of a hostile witness and the effect of failure on the part of the accused to discharge his burden, as follows: -

> "**6.** No doubt, in the present case all the witnesses who are related to the accused and the deceased have turned hostile. PW 1 Janki Bai, wife of the appellant and the mother of the deceased has also turned hostile. However, by now it is settled principle of law, that

such part of the evidence of a hostile witness which is found to be credible could be taken into consideration and it is not necessary to discard the entire evidence...

*** *** ***

"8. In this view of the matter, after the prosecution has established the aforesaid fact, the burden would shift upon the appellant under Section 106 of the Evidence Act. Once the prosecution proves, that it is the deceased and the appellant, who were alone in that room and on the next day morning the dead body of the deceased was found, the onus shifts on the appellant to explain, as to what has happened in that night and as to how the death of the deceased has occurred.

"9. In this respect reference can be made to the following observation of this Court in *Trimukh Maroti Kirkan* v. *State of Maharashtra*[12]:

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

12.9. Apart from the above, we may also usefully take note of the recent decision of this Court in the case of ***Sabitri Samantaray v. State of Odisha*: 2022 SCC OnLine SC 673**. In that case based on circumstantial evidence, with reference to Section 106 of the Evidence Act, a 3-judge bench of this Court noted that if the accused had a different intention, the facts are specially within his knowledge which he must prove; and if, in a case based on circumstantial evidence, the accused evades response to an incriminating question or offers a response which is not true, such a response, in itself, would become an additional link in the chain of events. The relevant part of the enunciation by this Court reads as under: -

12 (2006) 10 SCC 681 (as referred to hereinbefore).

> "**19**. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events."

12.10. As regards the relevancy of motive in a case based on circumstantial evidence, the weight of authorities is on principles that if motive is proved, that would supply another link in the chain of circumstantial evidence but, the absence of motive cannot be a ground to reject the prosecution case, though such an absence of motive is a factor that weighs in favour of the accused. In the cases of ***Nandu Singh*** and ***Shivaji Chintappa Patil*** (supra), reliance has essentially been placed on the decision in ***Anwar Ali*** (supra), wherein this Court has referred to and relied upon the principles enunciated in previous decisions and has laid down as under: -

> "**24.** Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in *Suresh Chandra Bahri* v. *State of Bihar*[13] that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in *Babu*[14], absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under:-

13 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60.
14 (2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179.

> "*25*. In *State of U.P.* v. *Kishanpal*[15], this Court examined the importance of motive in cases of circumstantial evidence and observed:
>
> '*38*. … the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.
>
> *39*. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one……..'
>
> *26*. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide *Pannayar* v. *State of T.N.*[16])."

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

Concurrent findings do not call for interference in this case

14. As noticed, the Trial Court and the High Court have concurrently recorded the findings in this case that the prosecution has been able to establish the chain of circumstances leading to the conclusion that the appellant is guilty of the offence of murder of the victim, his wife. The fundamental facts established by the prosecution evidence are that the dead body of the victim was brought to the police station; and that after registering FIR on the basis of report (Ex. 1) made by PW-1, inquest was carried out and the inquest report (Ex. 2) was drawn at the police station, which was signed by the informant as also by the other witnesses, PW-2,

15 (2008) 16 SCC 73: (2010) 4 SCC (Cri) 182.
16 (2009) 9 SCC 152 : (2009) 3 SCC (Civ) 638 : (2010) 2 SCC (Cri) 1480.

PW-3 and PW-4. The post-mortem report and the deposition of PW-8 further make it clear that the victim had died because of asphyxia, which was a result of throttling. The other undeniable fact has been that the victim was the wife of the appellant and before her death, she was living with the appellant. It has not been the case of the appellant or even the private witnesses that anyone else was also living/residing with them. Yet another factor has been that while his wife had died an unnatural death, the appellant was not to be found nearby and could only be apprehended later at a distant place. These facts are either undeniable or are clearly established by the prosecution evidence. Thus, it cannot be said that the prosecution has not discharged its primary burden of bringing home cogent circumstances pointing towards the guilt of the appellant.

14.1. Then, the other links in the aforementioned chain of circumstances could be iterated as follows: -

(a) The witness PW-1 Md. Akbar Ali, attempted to suggest the story that the victim was suffering from illness and had been hospitalised but did not deny that he had been to the police station. He admitted having put his signatures on the ejahar (Ex. 1) which led to the FIR and also on the inquest report (Ex. 2) but attempted to suggest the so-called imbalance of his mind, which was only an uncertain pretext.

(b) The witnesses PW-2 to PW-6 also attempted to suggest that the victim was suffering from illness, she was hospitalised, and she

died in the hospital but there had been two basic snags as regards their testimonies: one, that there was no corroboration in the form of any evidence to show her hospitalisation, if at all any such event had taken place; and second, that the witnesses PW-3 and PW-4 did not deny their signatures on the inquest report (Ex. 2), which was drawn at the police station. It needs hardly any reiteration that if the victim had died in the hospital due to illness, neither there was any occasion to carry her dead body to the police station nor the dead body would have carried such injuries, which were indicative of physical assault nor there was any reason for the doctor conducting post-mortem to opine about asphyxia due to throttling.

(c) The story sought to be suggested by PW-1 to PW-6 about the illness and hospitalisation of the victim had been of blatant falsehood and the appellant, in his examination under Section 313 CrPC, categorically endorsed that story and accepted the testimony of PW-1 to PW-6 as correct. There had not been any other explanation by the appellant as regards injuries on the person of his wife, who was living with him, and about the cause of her unnatural death with throttling.

(d) The appellant was admittedly not available at his place of residence at the relevant time and not even in the village area but was admittedly away to a different place. Again, the appellant

suggested in his examination under Section 313 CrPC that he had gone to the other place to procure medicines for himself. Neither his nature of illness was shown nor he was found carrying any medicine.

15. The factors as noticed hereinabove may not be decisive of the matter when taken singularly but, when the entire chain of circumstances, established by way of undeniable facts and the proven facts are juxtaposed with these factors; and all the relevant factors are joined together, the present one turns out to be a case where the burden envisaged by Section 106 of the Evidence Act operates heavily against the appellant.

16. The victim was none other than the wife of the appellant and was living with him. Thus, the basic fact as to when did he part with the company of his wife was within the knowledge of the appellant alone. He explained nothing in that regard. Secondly, when the appellant's wife was found killed with the dead body carrying several injuries and the cause of death having been asphyxia due to throttling, the appellant was required to explain such injuries, which the deceased sustained while living with him in the same dwelling house. Again, there had not been any explanation from the appellant. Thirdly, if his wife, who was residing with him, had been so ill as to be taken to hospital, the facts in that regard were also especially within the knowledge of the appellant and he was required to explain the nature of ailment as also the mode and manner by

which she was admitted to the hospital. As noticed, there is no explanation on these aspects from the appellant; rather the narrative cooked up by the witnesses and picked up by the appellant about the alleged ailment and hospitalisation of the deceased is found to be of utter falsehood. Fourthly, if his wife had died and still he had gone to some other place, the reason for doing so was also especially within the knowledge of the appellant alone. The reason as assigned by the appellant (about his own illness) is also found to be far away from truth.

17. Fact of the matter remains that all the aforesaid facts and factors, which ought to be in the knowledge of the appellant, are either not clarified or the explanation given by the appellant turns out to be false. Hence, in the given set of facts and circumstances, the legal consequence is that such omission coupled with such falsehood indeed provide additional links in the chain of circumstances.

18. Thus, the sum and substance of the matter is that the falsehood cooked up by the witnesses (regarding illness and hospitalisation of the victim) and readily accepted by the appellant coupled with the undischarged burden of Section 106 of the Evidence Act provide such strong links in this matter that the chain of circumstances is complete, leading to the conclusion on the guilt of the appellant beyond any doubt.

19. The other submissions, as regards the doubts on site plan (Ex. 3) or on the date of arrest of the appellant or about the place from where the dead body was carried to the police station, have only been noted to be rejected. The IO, PW-7, has categorically established that he had drawn the plan (Ex. 3) at the site and the same could not have been removed

out of consideration merely because of the curable fault that it was not annexed with the charge-sheet. The date of arrest also loses its relevance because the material fact remains undeniable that the appellant was not found at the place and the area of his dwelling house and had admittedly gone to Nidanpur, as stated by himself in his statement under Section 313 CrPC. In our view, the place from where the dead body was picked up to be carried to the police station, has hardly any bearing in the present case because the only other place suggested by the appellant in league with the witnesses PW-1 to PW-6 had been the hospital where the victim was allegedly admitted. Such a suggestion has been found to be false to the core. In any case, the dead body was indeed carried to the police station and the IO made the inquest report (Ex. 2) at the police station itself.

20. Taking all the aforesaid facts and circumstances together, it is not a case where the motive could have played any decisive role nor it had been a case where two views were possible. Equally, the present case had not been of conviction on suspicion alone. Therefore, the other decisions cited by learned counsel for the appellant do not call for much dilation in the present case.

21. For what has been discussed hereinabove, this appeal fails and is, therefore, dismissed.

…….J.
(DINESH MAHESHWARI)

……..……J.
(ANIRUDDHA BOSE)

NEW DELHI;
OCTOBER 13, 2022.