Naveen Singh @ Naveen Prasad Singh vs State Of Bihar & Anr on 21 June, 2017

Author: Aditya Kumar Trivedi

Bench: Aditya Kumar Trivedi

Patna High Court CR. APP (SJ) No.579 of 2015

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.579 of 2015
Arising Out of PS.Case No. -47 Year- 2012 Thana -SAHKUND District- BHA

==========

Shiv Shankar Singh, S/o Sachidanand Singh, resident of Village- Shahkund, P.S. Shahkund, District- Bhagalpur.

....

Versus

The State of Bihar

....

with

==========

Criminal Revision No. 1017 of 2015
Arising Out of PS.Case No. -null Year- null Thana -null District- B

==========

Naveen Singh @ Naveen Prasad Singh, son of Rudra Prasad Singh, resident of Village and Post Office- Karanja, Police station Shambhuganj, District Banka.

....

Versus

1. The State of Bihar.
2. Shiv Shankar Singh, son of Sachidanand Singh, resident of Village and Post Office -Shahkund, District- Bhagalpur.

.... Respondent/s

==========

Appearance :
(In CR. APP (SJ) No.579 of 2015)
For the Appellant/s : Mr. Krishna Prasad Singh-Sr. Advocate
Mrs. Meena Singh-Advocate
For the Informant : Mr. Bindhyachal Singh-Advocate
Mr. Parijat Saurav-Advocate
Mr. Ram Binod Singh-Advocate
For the State : Smt. Asha Singh-A.P.P.

(In CR. REV. No.1017 of 2015)
For the Petitioner/s : Mr. Bindhyachal Singh-Advocate
Mr. Parijat Saurav-Advocate
Mr. Ram Binod Singh-Advocate
For the Respondent No.2 : Mr. Krishna Prasad Singh-Sr. Advocate
Mrs. Meena Singh-Advocate
For the State : Mr. Umeshanand Pandit-A.P.P.
==========
CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT
Date: 21-06-2017

Before consideration of the merit of the case, the incidental event having taken place relating to the present appeal is to be taken note of for proper appreciation.

2. Khushbu Kumari, the victim, who was married with Shiv Shankar Singh on 22.05.2011, the appellant of Criminal Appeal No.579 of 2015 met with her death on 14.04.2012 at her sasural lying at village-Shahkund for which, her father Naveen Prasad Singh (petitioner of Cr. Rev. No.1017 of 2015) had instituted a case bearing Shahkund P. S. Case No.47 of 2012 under Section 304B/ 34 of the I.P.C. against the persons so named therein. After investigation, chargesheet was submitted under Section 304B/34 of the I.P.C. However, during course of trial, charge was framed in an alternative under Section 304B/34 of the I.P.C. as well as Section 302/34 of the I.P.C. The learned lower Court of 3rd Additional Sessions Judge, Bhagalpur after proceeding and concluding the trial bearing Sessions Trial No.1310 of 2012, did not record any finding relating to Section 302/34 of the I.P.C., although under Para-27 as well as Para-28 of the judgment had concluded that deceased was done to death by strangulation. Simultaneously, convicted the appellant for an offence

punishable under Section 304B I.P.C. while acquitting the others for the same vide judgment of conviction dated 22.08.2015 and order of sentence dated 26.08.2015, sentencing the appellant to undergo

rigorous imprisonment for seven years as well as to pay fine Rs.25,000/- and in default thereof, to undergo simple imprisonment for one year, additionally.

3. Against the judgment impugned, the informant (petitioner of Cr. Revision) had filed Cr. Appeal (D.B.) No.161 of 2016, which accordingly, came up before the Division Bench and while dismissing the appeal, it has been observed:- "from the evidence of PW-2, Vishwajit Singh, who was cousin brother of the deceased, it appears that it was the accused persons, who had gone to inform the police. PW-3 Piyush Kumar Singh, brother of the deceased, who deposed as an eye witness to the assault and murder, but evidently, when this fact was not mentioned in the F.I.R., it is highly unreliable."

4. After giving pungent remarks against some of the witnesses, the Division Bench also observed "from the impugned judgment, we find Defence Witness No.1 stated when the inmates of the house learnt that the deceased had committed suicide, Shiv Shankar Singh went to the police, but he was detained there and he had also learnt that it was Shiv Shankar Singh, who had informed the family members of the deceased. It was only on consideration of such circumstances that the trial court had acquitted all the respondents under Section 302/34 of the I.P.C. and Respondent Nos.2-6 under

Section 304B of the I.P.C. which cannot be faulted and hence, finding

no merit in the application, the same is dismissed."

5. From the judgment impugned, it is evident that the learned lower Court prepensly proceeded with the trial as being a case to be that of dowry death punishable under Section 304B of the I.P.C. whereupon, discussed the evidence, considered the rival argument and convicted the appellant Shiv Shankar Singh only acquitting other co-accused without observing and concluding whether a case of murder punishable under Section 302/34 of the I.P.C. is made out or not and further, if the same is not made out, acquitting the appellant and others therefor. That means to say, there happens to be flagrant violation of the mandate of law which, the Court is thrusted upon while proceeding with the trial as well as the judicial norms, which should be adopted while preparing the judgment.

6. The Apex Court at different occasion have confronted with such situation whereunder lapses on the part of lower Court, in properly tackling of the trial as well as scrutiny of the evidence on the score of identifying the offences distinctly, independently, exclusively, ultimately misjudging the situation, more particularly relating to a case where accused are being prosecuted for an offence of murder as well as dowry death.

7. In Jasvinder Saini and others vs. State (Government of NCT of Delhi) reported in (2013) 7 SCC 256, it has

been held:-

"15. It is common ground that a charge under Section 304B IPC is not a substitute for a char murder punishable under Section 302. As in the case of murder in every case under Section 304B also there is a death involved. The question wh it is murder punishable under Section 302 IPC o dowry death punishable under Section 304B IPC depends upon the fact situation and the evidenc the case. If there is evidence whether direct o circumstantial to prima facie support a charge under Section 302 IPC the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarte If the main charge of murder is not proved agai the accused at the trial, the Court can look in evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The ingredients constituti two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial Court i view of the matter acted mechanically for it fr an additional charge under Section 302 IPC

without adverting to the evidence adduced in th
case and simply on the basis of the direction i
in Rajbir s case (2010)15 SCC 116. The High Cou
no doubt made a half hearted attempt to justify
framing of the charge independent of the direct
in Rajbir s case (supra), but it would have bee
more appropriate to remit the matter back to th
trial Court for fresh orders rather than lendin
support to it in the manner done by the High
Court."

8. In Vijay Pal Singh and others vs. State of Uttarakhand reported in (2014) 15 SCC 163, it has been held:-

"18. However, it is generally seen that in case
where a married woman dies within seven years o
marriage, otherwise than under
circumstances, no inquiry is usually conducted
see whether there is evidence, di
circumstantial, as to whether the offence falls
Section 302 of IPC. Sometimes, Section 302 of I
is put as an alternate charge. In cases where t
is evidence, direct or circumstantial, to show
the offence falls under Section 302 of IPC, the
court should frame the charge under Section 302
IPC even if the police has not expressed any
opinion in that regard in the report under Sect

173(2) of the Cr.PC. Section 304B of IPC can be
Patna High Court CR. APP (SJ) No.579 of 2015

put as an alternate charge if the trial court s
In the course of trial, if the court finds that
no evidence, direct or circumstantial, and proo
beyond reasonable doubt is not available to
establish that the same is not homicide, in suc
situation, if the ingredients under Section 304
IPC are available, the trial court should proce
under the said provision. In Muthu Kutty and
another v. State by Inspector of Police, T.N.1,
(2005) 9 SCC 113, this Court addressed the issu
and held as follows:

"20. A reading of Section 304-B IPC and
Section 113- B, Evidence Act together makes it
clear that law authorises a presumption that th
husband or any other relative of the husband ha
caused the death of a woman if she happens to d
in circumstances not normal and that there was
evidence to show that she was treated with crue
or harassed before her death in connection with
demand for dowry. It, therefore, follows that t
husband or the relative, as the case may be, ne
not be the actual or direct participant in the
commission of the offence of death. For those t

are direct participants in the commission of th
offence of death there are already provisions
incorporated in Sections 300, 302 and 304. The
Patna High Court CR. APP (SJ) No.579 of 2015

provisions contained in Section 304-B IPC and
Section 113-B of the Evidence Act
incorporated on the anvil of the Dowry Prohibit
(Amendment) Act, 1984, the main object of which
to curb the evil of dowry in the society and to
it severely punitive in nature and not to extri
husbands or their relatives from the clutches o
Section 302 IPC if they directly cause death. T
conceptual difference was not kept in view by t
courts below. But that cannot bring any relief
conviction is altered to Section 304 Part II. N
prejudice is caused to the accused-appellants a
they were originally charged for offence punish
under Section 302 IPC along with Section 304-B
IPC."

19. In a recent decision, this Court in Jasvind
Saini and others v. State (Government of NCT of
Delhi) (2013) 7 SCC 256, observed thus:

"15. It is common ground that a charg
under Section 304-B IPC is not a substitute for
charge of murder punishable under Section 302.
in the case of murder in every case under Secti

304-B also there is a death involved. The quest
whether it is murder punishable under Section 3
IPC or a dowry death punishable under Section
304-B IPC depends upon the fact situation and t
Patna High Court CR. APP (SJ) No.579 of 2015

evidence in the case. If there is evidence whet
direct or circumstantial to prima facie support
charge under Section 302 IPC the trial court ca
and indeed ought to frame a charge of murder
punishable under Section 302 IPC, which would
then be the main charge and not an alternative
charge as is erroneously assumed in some quarte
If the main charge of murder is not proved agai
the accused at the trial, the court can look in
evidence to determine whether the alternative
charge of dowry death punishable under Section
304-B is established. The ingredients constitut
the two offences are different, thereby demandi
appreciation of evidence from the perspective
relevant to such ingredients. The trial court i
view of the matter acted mechanically for it fr
an additional charge under Section 302 IPC
without adverting to the evidence adduced in th
case and simply on the basis of the direction i
in Rajbir case. The High Court no doubt made a

halfhearted attempt to justify the framing of t
charge independent of the directions in Rajbir
but it would have been more appropriate to remi
the matter back to the trial court for fresh or
rather than lending support to it in the manner
by the High Court."

20. Though in the instant case the accused were
charged by the Sessions Court under Section 302
IPC, it is seen that the 2 (2013) 7 SCC 256 tri
court has not made any serious attempt to make
inquiry in that regard. If there is evidence av
on homicide in a case of dowry death, it is the
of the investigating officer to investigate the
under Section 302 of IPC and the prosecution to
proceed in that regard and the court to approac
the case in that perspective. Merely because th
victim is a married woman suffering an unnatura
death within seven years of marriage and there
evidence that she was subjected to cruelty or
harassment on account of demand for dowry, the
prosecution and the court cannot close its eyes
the culpable homicide and refrain from punishin
its author, if there is evidence in that regard
or circumstantial.

.....

23. In two of the early decisions of this Court
the introduction of Section 304B of IPC, the
ingredients of the offence and the interplay of
Section 304B of IPC with Sections 498A, 302, 30
of IPC have also been discussed. In State of Pu
v. Iqbal Singh and others (1991) 3 SCC 1, the
Court in paragraph-8 stated that:

"8. ... The legislative intent is clear
the menace of dowry deaths, etc., with a firm h
We must keep in mind this legislative intent. I
be remembered that since crimes are generally
committed in the privacy of residential homes a
in secrecy, independent and direct evidence is
easy to get. That is why the legislature has by
introducing Sections 113-A and 113-B in the
Evidence Act tried to strengthen the prosecutio
hands by permitting a presumption to be raised
certain foundational facts are established and
unfortunate event has taken place within seven
years of marriage. This period of seven years i
considered to be the turbulent one after which
legislature assumes that the couple would have
settled down in life. If a married women is sub
to cruelty or harassment by her husband or his

family members Section 498-A, IPC would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, o connection with, any demand for d immediately preceding death by burns and bodily injury or in abnormal circumstances within seve years of marriage, such husband or relative is deemed to have caused her death and is liable t punished under Section 304-B, IPC. When the

question at issue is whether a person is guilty dowry death of a woman and the evidence disclos that immediately before her death she was subje by such person to cruelty and/or harassment for in connection with, any demand for dowry, Secti 113-B, Evidence Act provides that the court sha presume that such person had caused the dowry death. Of course if there is proof of the perso having intentionally caused her death that woul attract Section 302, IPC. Then we have a situat where the husband or his relative by his willfu conduct creates a situation which he knows will drive the woman to commit suicide and she actua does so, the case would squarely fall within th ambit of Section 306, IPC. In such a case the conduct of the person would tantamount to incit

or provoking or virtually pushing the woman int
desperate situation of no return which would
compel her to put an end to her miseries by
committing suicide. ..."

.....

32. Now, the question as to why the High Court,
having entered a conclusion that it is a case o
murder at the hands of the appellants, yet chos
convict them only under Section 304B of IPC. As
have already indicated, it could have been a ca

for the High Court or for that matter this Cour
issuing notice for enhancement of punishment to
those against whom there is evidence to connect
them with the murder. The incident being of 199
the prosecution having not chosen to link all t
circumstances in a chain with no missing links
reach the irresistible and conclusive finding o
involvement of the accused, the High Court woul
have thought it more prudent to convict the acc
only under Section 304B of IPC. No doubt, in su
a case, the High Court should not have entered
categoric finding on murder since once the cour
enters such a finding, the punishment can only
under Section 302 of IPC. Having regard to the

circumstances which we have referred to above, are of the view that though this case could hav been dealt with under Section 302 of IPC, at th distance of time and in view of the lack of evi on the chain of circumstances, it will not be p for this Court to proceed under Section 302 of for enhancement of punishment. There are no suc problems as far as the presumption under Sectio 113B of the Indian Evidence Act, 1872 is concerned. Once the ingredients of Section 304B IPC are established, the presumption is that th death has been caused by the husband or his

relatives, who caused the cruelty or harassment That presumption can safely be drawn in the ins case, as we have already discussed above, as al ingredients under Section 304B of IPC have been proved beyond doubt in the present particularly since there is no direct evidence part of the appellants to rebut the same.

9. While the instant Criminal Appeal has been preferred by the sole appellant Shiv Shankar Singh challenging the finding arrived at by the learned lower Court holding appellant guilty for an offence punishable under Section 304B of the I.P.C. and accordingly, sentencing therefor, informant had also filed Cr. Revision No.1017 of 2015 for enhancement of sentence and on account thereof,

have been heard together and are being decided by a common judgment.

10. Naveen Singh (PW-5) filed written report disclosing therein that his daughter Khushbu Kumari was married with Shiv Shankar Singh, son of Sachchidanand Singh on 22.05.2011 and on account thereof, was staying at her sasural. Marriage of his son was scheduled on 24.04.2012 for that, his son Piyush Kumar Singh had gone to Shahkund to bring Khushbu on 12.04.2012. When his son Piyush Kumar did not return up-till morning of 14.04.2012 over which he tried to talk with him, but could not materialized. On

account thereof, he talked with his son-in-law Shiv Shankar Singh, who disclosed that she is taking bath and so, he will get conversation in ten minutes. After 30 minutes, he again dialed over which he disclosed that she is praying, after 10 minutes, he will materialize the talk. On account of this kind of behaviour, he became suspicious as in the previous evening while Piyush Kumar Singh talked with his mother, disclosed that his brother-in-law is asking for Bolero vehicle and is insisting upon that he will not allow Bidai till getting of vehicle and for that, Khushbu was assaulted. In the aforesaid background, he along with his brother Ranvir Singh, another son Diwakar Singh and villagers Vishwajit Singh, Gopal Singh came at the house of his son-in-law at village-Shahkund where he met with his son Piyush Kumar Singh, who was weeping and disclosed to them that his brother-in-law along with his parents brutally assaulted Khushbu. He was ousted

from the house directing to sleep outside. In the morning, when they have not opened the door, in spite of best effort taken by him, then he gone over roof through stair and then, saw all the family members sitting near the door and were indulged in conversation. When they saw him over the roof, then he was taken inside and found Sachchidanand Singh, Shiv Shankar Singh, Putul Kumari, Soni Kumari, Moni and mother-in-law of Khushbu Kumari sitting. His sister was murdered by strangulation. So, it has been alleged that

Khushbu was murdered for Bolero Jeep.

11. As stated above, on the basis of the aforesaid written report, Shahkund P.S. Case No.47 of 2012 was registered under Section 304B/ 34 of the I.P.C. whereunder chargesheet was also submitted after concluding investigation facilitating the trial which concluded in a manner, the subject matter of consideration.

12. Defence case as has been pleaded as well as suggested to the witnesses is that of complete denial of the occurrence. It has also been pleaded that deceased was a good student and was eager for further study, which was denied and being obstinate, she committed suicide for that, none was responsible. It has also been pleaded that after coming to know about the same, the accused himself informed the police as well as the family of the deceased and for that also examined DWs.

13. In order to substantiate its case, prosecution had examined altogether seven PWs, out of whom, PW-1 Pancham Singh, PW-2, Vishwajit Singh, PW-3 Piyush Kumar Singh, PW-4 Pintu

Singh, PW-5 Navin Prasad Singh, PW-6 Rajiv Kumar Sah and PW-7 Dr. Yogesh Prasad Singh. Side by side, had also exhibited the document as Exhibit-1 written report, Exhibit-2 formal F.I.R., Exhibit-3 P. M. Report. At the other end, the defence had also examined, DW-1 Japan Singh and also exhibited as Exhibit-A Station

Diary Entry dated 14.04.2012, Exhibit-B series, signature of seizure list witnesses, Exhibit-C order of the Karnataka High Court relating to grant of bail to accused Pintu Singh (one of brother of deceased), Exhibit-D order dated 28.11.2013 by which the learned lower Court of Banguluru had taken cognizance against Pintu Singh, Exhibit-E order dated 19.01.2005 relating to Pintu Singh, Exhibit-F certified copy of Complaint Case No.1543 of 2011, Exhibit-G, S.A. of Reena Devi in Complaint Case No.1543 of 2011, Exhibit-H, certified copy of order of Complaint Case No.1543 of 2011.

14. While challenging the order of conviction and sentence, it has been submitted at the end of the appellant that the same happens to be contrary to the materials available on the record and on account thereof, is fit to be set aside. In order to substantiate such plea, it has also been submitted that all the witnesses happen to be own kith and kin of the deceased, hostile to the appellant whereupon their evidences are fit to be rejected. Furthermore, as the initial prosecution version has been exaggerated during course of trial, materially affecting the prosecution case and so, the evidences suggest it unreliability, un-creditworthy, unbelievable whereupon fit to be

discarded.

15. Adverting to main issue, it has been submitted that initial version lacks demand of dowry what to talk about Bolero Jeep

since after finalization of the negotiation as well as marriage and in likewise manner, torture on that very pretext and that being so, the subsequent event as introduced by the prosecution that on the eve of Bidai, a condition flashed that Bidai will only materialize after getting Bolero Jeep, is nothing, but misnomer. The aforesaid theme has purposely been introduced to cover up own fault having at the end of the deceased, who committed suicide as the prosecution party failed to provide her an opportunity to have her higher study instead of marrying her and for that, appellant was not at all responsible. In likewise manner, it has also been submitted that there also happens to be no evidence against the appellant that he abetted the suicide of deceased in any manner. In the aforesaid facts and circumstances of the case, neither there happens to be positive, concrete evidence justifying the conclusion arrived at by the learned lower Court nor with regard to abetment of the suicide. Consequent thereupon, the judgment of conviction and sentence impugned is fit to be set aside.

16. In addition thereto, it has also been submitted that the doctor during course of post mortem had found cause of death due to asphyxia on account of strangulation originating due to ligature mark present over the neck which clearly suggests the case of suicide and not of homicide. Had there been, there should have been finger mark over the neck suggesting the homicidal death. Therefore, in its

entirety, the evidences did not suggest it a case of dowry death rather it suggests a case of suicide and further, on account of lacking of evidence identifying the appellant to be abettor, attracts clean acquittal. Furthermore, it has been argued that once the evidences against co-accused have been found insufficient, then in that event, appellant should have also be given the same treatment.

17. On the other hand, learned Additional Public Prosecutor along with learned counsel for the petitioner/ informant have submitted that though the finding recorded by the learned lower Court has been challenged under Criminal Appeal No.161 of 2016 (D.B.), which was dismissed with out considering the infirmities persisting in the judgment impugned and in likewise manner, also failed to properly appreciate the evidence of Piyush Kumar Singh (PW-3), by virtue of said evidence substantiated his status to be an eye witness to occurrence. In likewise manner, the appellate Court did not pursue the matter that the conduct of the appellant Shiv Shankar Singh as disclosed by DW-1 that he had gone to police station to inform the police and was detained by the police at the police station was not at all found corroborated by the I.O., PW-6 and that being so, his evidence was not at all reliable so much so that his disclosure with regard to information having given to the prosecution party was based upon hearsay evidence. Dismissal of appeal by the Division Bench

has not been challenged at the end of the informant before the Apex Court, however, during course of consideration of the appeal/ revision in hand, it would be an independent exercise without having influence of the judgment of the Division Bench and on account thereof, there should be an independent appreciation of the material in order to dispense with the justice. Apart from the fact that the same is permissible in the eye of law.

18. It has further been submitted that from the evidence of the PW-3, it is evident that it happens to be out and out a case of murder and for that, immediate cause happens to be for insistence of deceased for Bidai, which was forbidden for time being facilitating procurement of Bolero Jeep and so, the non-compliance of mandate of law by the learned lower Court and further, non-application of judicial mind as is apparent from bare perusal of the judgment impugned leading to miscarriage of justice needs setting aside the judgment impugned and be remanded to the learned lower Court to pass fresh judgment after hearing both the parties, in accordance with law.

19. Apart from medical evidence, from perusal of L. C. Record, it is evident that two kinds of oral evidence have been adduced. The first one by examining PW-3, who claimed to have his presence at the sasural of Khushbu on the fateful day i.e. eye witness and the second kind of evidence happens to be in a nature of

corroboration.

20. Before coming to ocular evidence, the evidence of doctor, PW-7, Yogesh Prasad Sah is taken up for consideration. On

14.04.2012

while he was posted at Jawahar Lal Medical College and Hospital, Bhagalpur, conducted post mortem over dead body of Khushbu Kumari and found the following ante-mortem injuries:-

> i) One bruise 1" x ¼" on upper eyelid right conjunctive was found deeply congested and blood clots were present in conjunctive.
>
> ii) Two abrasions ¼" each were present on chin and middle of neck.
>
> iii) One ligature mark 11" long circular completely in circling the neck below thyroid cartilage was present underline tissue of ligature mark was bruised and congested. Tricia contained blood clots both lunges were found deeply congested.

In the opinion of the doctor, cause of death happens to be asphyxia and shock as a result of strangulation. Time elapsed since death happens to be 12 to 24 hours prior to the time of post mortem (Exhibit-3). During cross-examination, this witness has not been tested at least over nature of the injury being accidental, homicidal or suicidal as well as relating to other ante-mortem injuries present over dead body, ante-mortem.

21. Modi in Medical Jurisprudence and Toxicology (2011 Edition) had defined strangulation in following manner:-

> 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.

22. Therefore, it has become apparent from perusal of the post mortem report Exhibit-3 along with the evidence of PW-7, doctor, coupled with conclusiveness in terms of definition as stated hereinabove, that death of the deceased was on account of homicidal effect, which the learned lower Court rightly observed.

23. Now, stepping forward, first of all, evidence of PW-3, Piyush Kumar Singh is to be considered whom the prosecution posed as an eye witness. He during his examination-in-chief had stated that the occurrence is dated 14.04.2012. On the eve of marriage of his brother Sabut Singh, he had gone to sasural of Khushbu, his sister, who was married to Shiv Shankar Singh about a year ago, for Bidai. He had gone to Shahkund on 12.04.2012 and disclosed Shiv Shankar Singh, Pramila Devi, Sachchidanand Singh, Soni Kumari, Moni Kumari, who said that on the following morning Bidai will be effected. Accordingly, he stayed at the house of his sister. On the following morning, Shiv Shankar Singh, Urmila Devi, Sachchidanand Singh, had directed that Bidai will be effected only after facilitation of Bolero Jeep. Thereafter, he informed his father over which, his father had directed to talk with his another brother Pintu Kumar. He talked with Pintu. Pintu had directed him

to inform that for the present, on account of poor financial position, they are not in a position to provide Bolero Jeep. As soon as there would be improvement in their financial status, Bolero Jeep will be given to them. He, accordingly, disclosed the same before them. During midst thereof, his sister intervened and requested them for Bidai as, marriage of her brother was to be solemnized over which, Shiv Shankar Singh caught hold her hair and pulled down. Soni and Moni also caught hold her and began to assault. Urmila Devi and Sachchidanand provoked them to murder her. They further disclosed that Shiv Shankar will be re-married. Then thereafter, they brutally assaulted his sister. When he intervened, he was also assaulted by his brother-in-law. Sachchidanand Singh and Shiv Shankar Singh locked him in a room after snatching his mobile. His sister was crying, "save her save her". In the morning of 14.04.2012, they took out him from the room and forced to leave. Anyhow, he gone over roof of his neighbour and then, crossed over roof of his sister and then, got down. Then, his brother-in-law had disclosed that phone has been received from his house and during course thereof, his brother-in-law had disclosed that his sister is taking bath. Then thereafter, his brother-in-law handed over mobile to him and had also disclosed that his sister is dead. Thereafter, he informed his parents regarding the mishappening. He had seen the dead body of his sister having ligature mark over her neck as well as sign of assault over her face. Till then, his family members arrived. First of all, police came and thereafter, his family members. Identified the accused in dock. During cross-examination at Para-13, he had stated that his sister was eager to higher study. He is not aware with the fact that his sister had disclosed the same to his brother-in-law whereupon his brother-in-law had disclosed that there is no school at Shahkund rather it happens to be at Sultanganj and there will be lot of problem in to and fro. In Para-14, he had stated that he reached at the sasural of his sister. He had carried sweets which he handed over and the same was received cordially. In Para-15, he had stated that when he reached at the sasural of his sister, he got positive response as well as proper hospitality. Then at subsequent paragraph, it is evident that he has been confronted with lot of question regarding interse relationship in between his brother Pintu Singh as well as his wife Reena Devi and further, with regard to institution of a rape case by the daughter of Pintu Singh (name withheld) at Benguluru. In Para-18, he had stated that Thana lies at short distance from the sasural of his sister. SIM Number belonging to him along with the SIM Number of his brother Pintu Singh has been disclosed. In Para-19, he had shown his inability to disclose exact time at which hour, he had informed his father on 14.04.2012. In Para-20, he had stated that he sat for two minutes outside house of sasural of his sister on 14th. In Para-21, he had stated that police had come at 7-8 a.m. on 14.04.2012. Police had enquired from him regarding his identity. He had disclosed the event before the police. In Para-22, he had stated that he again gone inside along with police where police had seen his sister dead. At that very time, police had prepared some paper, but he is not aware what kind of document was prepared by the police. Police had arrested all the accused persons. Police had taken away the dead body, he also accompanied. In Para-24, he had denied the suggestion that his brother-in-law had directed his sister not to go on 13th as 10-11 days are ahead with a request that 2-3 days prior to marriage, she should go to her Naihar, but his sister insisted thereupon. In Para-25, he had stated that his brother-in-law caught hold hair of his sister and twisted her in the courtyard. His sister was crying. He had gone to save whereupon, his brother-in-law had assaulted him. Both the sister in-law of Khushbu also assaulted with pastry roller. The father in-law of Khushbu was provoking. Father-in-law and mother-in-law also assaulted. Gotni Putul Devi had also assaulted. He had not seen whether his sister died at that very time or not, but he had seen the accused persons carrying

his sister in a room and then, laid down over bed. In Para-26, he had disclosed that only brother-in-law had assaulted him. In Para-28, he had admitted that he had seen ceiling fan in the room of Khushbu. As, accused persons had snatched away his mobile on account thereof, he could not be able to inform his family members earlier. In Para-29, he had stated that after receiving information from him, his father had disclosed that they are coming. Then thereafter, 20-25 persons came from his village. They came 10-20 minutes after arrival of the police. He had not narrated full detail of the occurrence to all of them. All of them gone inside house, at that very time all the accused persons were there. At that very time, his sister was lying over bed. In Para-32, he had stated that he is not aware at which time, his father had handed over written report to the police. At Para-33, there happens to be contradiction, which is found substantiated to some extent from Para-13 of PW-6, the I.O.

24. Now, coming to second nature of evidence, the same is being taken up from PW-5, the informant Naveen Singh, who happens to be the father of deceased. He in his chief, had stated that he happens to be informant. Written report was prepared by Bimlesh Kumar Singh over which, he put his signature (Exhibit-1). Khushbu Kumari was his daughter, who was married with Shiv Shankar Singh about 10 months ago. Khushbu was staying at her sasural after marriage. She came to his place only once after marriage. When she came, she disclosed that her mother in-law, father-in-law, husband are demanding Bolero Jeep. Shiv Shankar Singh came and took her away. As, the marriage of his son Sapoot Singh was scheduled for that, he had sent Piyush Kumar Singh for Bidai to her place on 12.04.2012, Piyush had disclosed on 13th that husband, in laws are insisting upon Bolero whereafter Bidai will be effected. They have disclosed that they are not in a position to provide the same on account of loan subsisting against them which they took during course of marriage. He had also gone to the sasural of his daughter on 13th and explained the situation, whereupon sasuralwala of his daughter had assured that Bidai will be effected on 14th. When his son and daughter had not come on 14th upto 6-7 a.m., then his wife dialed his son Piyush whereupon his son disclosed that they had murdered his sister. Then thereafter, he along with 6-7 persons reached at the place of his daughter (Shahkund). After reaching, they had seen dead body of his daughter lying on a bed. She was dead. There was sign of ligature over the neck. There was sign of assault over face. They enquired from husband, father-in-law, mother-in-law, daughter-in-law, Gotni whereupon they disclosed that they have not murdered. Police was present since before. They came to know that his daughter was assaulted by Shiv Shankar Singh, Sachchidanand singh, Urmila Devi, Soni Kumari, Moni Kumari, Putul Devi. Dead body was sent to Bhagalpur for post mortem. During cross-examination at Paras- 2,3,4,5,6,7,8,9,10, there happens to be cross-examination relating to Pintu. In Para-12, he had stated that at the time of marriage, Khushbu was studying, she was inclined to read furthermore. In Para-13, he had disclosed that he is unaware whether Khushbu was insisting upon for her further study. In Para-14, he had denied that his daughter was stubborn. In Para-22, he had stated that on 14th, there were only two ladies and two gents present in his house. In Para-23, he had stated that he had talked with Piyush on 13th. There was no talk with Piyush on 14th. In Para-24, he had stated that he gone to place of his daughter. He had further stated that when he came to the sasural of his daughter, he talked with all the family members and then, proceeded there from at 11 O' clock. He stayed at the house of his daughter about half an hour. In Para-26, he had stated that it is true that when he found mobile of Piyush switched off, became suspicious. He along with his son Ranvir, Gopal, Vishwajit, Umesh rushed to the sasural of his

daughter on 14th. In Para-28, he had disclosed that he reached at the sasural at 10 O' clock. Then thereafter, they had gone inside the house. In Para-30, he had stated that when he gone inside the house, they found dead body. At that very time, all the family members were present, save and except elder brother of Shiv Shankar Singh. They were not handcuffed. He along with others had gone inside the room of his daughter. He touched Khushbu Kumari to ascertain whether she is alive or dead. He removed wrapper. Police had not done anything in his presence. In Para-45, he had stated that Bimlesh Kumar Singh had scribed the application at his dictation. In Para-46, he had stated that application was filed after 1 O' clock. In Para-47, he had stated that as he was mentally disturbed on account thereof, he is unable to explain the activities followed by the police. In Para-48 and 49, there happens to be cross-examination overcoming, departure of Khushbu from her sasural to his place after marriage. Paras-50, 51, 52 is the contradiction which, to some extent is found corroborated with PW-6 Para-9. In Para-53, he said that his son-in-law had come 2-3 days prior to the occurrence on leave.

25. PW-1 Pancham Kumar Singh, one of the sons of informant as well as brother of deceased had deposed that on 14th he was at his house. Khushbu Kumari, his sister, was married with Shiv Shankar Singh on 22.05.2011 and was staying at her sasural at village-Shahkund. While she was staying, her husband, father-in-law, mother-in-law, Gotni, Nanad, advanced demand of Bolero Jeep. His sister disclosed that financial condition of her father would not permit to fulfil their demand. He had visited the place of his sister 2-3 times and during course thereof, his sister used to say the aforesaid event. He had disclosed to father-in-law, mother-in-law of his sister that after earning, they will fulfill their demand, but they were not inclined to wait till then. He returned back. They discussed at their house and then, sent Piyush Kumar Singh for Bidai, who had gone on 12.04.2012. The sasuralwala of his sister were not inclined to accept Bidai, which was communicated by his brother on 13th. On 14th, when they have gone, they saw his brother weeping outside at verandah whereupon they enquired. His brother had disclosed that all of them murdered his sister in the preceding night by way of strangulation. They have gone inside the house and found his sister dead having injury over her neck and cheek. Police was also present since before. Thereafter, all the family members were apprehended by the police. Dead body of his sister was lying over bed. His father had instituted the case. Dead body was taken to mortuary. During cross-examination at Para-3 said that they have not taken any legal recourse for the demand of dowry. At Paras-4, 5, 6, there happens to be cross- examination relating to his family status. Again from Paras-16 to 22, there happens to be cross-examination regarding atmosphere of his brother Pintu Singh's family life. In Paras-23, 24, there happens to be cross-examination relating to an incident wherein there was murderous attack over his life. In Paras-25 and 26, there happens to be disclosure that before marriage, his father had gone to the place of his brother in-law and after being satisfied, marriage was solemnized in pleasant atmosphere. Then, there happens to be cross-examination over coming, going (Bidai) of the deceased to her Naihar as well as sasural. In likewise manner, with regard to his own activity. In Para- 31, he had stated that whenever he used to come to sasural of his sister, he remains there 2-3 days. His brother Piyush Kumar Singh was also there whenever demand of dowry was made. It was in the month of April, 2011, which subsequently been corrected as 2012. In Para-32, he had stated that Piyush Kumar Singh had disclosed that demand was advanced by the sasuralwala of deceased. In Para-33, he had stated that they have tried to explain the situation over telephone to the sasuralwala of his sister. In Para-35, he had denied the suggestion that husband of

Khushbu had requested times without number to leave such activity for which, she was not inclined. In Para- 37, he had disclosed that Piyush Kumar Singh had gone to effect Bidai on account of scheduled marriage of his brother. Piyush Kumar Singh had gone on 12.04.2012. He had denied the suggestion that it is not a fact that husband of Khushbu Kumari had disclosed that the much more time is ahead of marriage of her brother. They will effect Bidai on 21-22. In Para-38, he had denied the suggestion that his sister had insisted upon to effect Bidai with Piyush. On 12.04.2012, Piyush Kumar Singh stayed there. Again, he denied the suggestion that it is not a fact that on 13.04.2012, husband of Khushbu requested her not to proceed, as she would visit the place later on. Again, he denied that it is not a fact that all the family members requested her, but his sister did not accept. In Para-40, he had stated that on 13.04.2012, his brother Piyush Kumar Singh remained at the place of his sister. Piyush Kumar Singh had telephoned that they were demanding vehicle. He had disclosed that sasuralwala of Khushbu are demanding. In Para-41, he had stated that on 14.04.2012, Piyush Kumar Singh had informed regarding the occurrence in the morning hour whereupon his father disclosed before all the family members and then thereafter, they along with villagers came to the place of Khushbu where they arrived at about 10-11 a.m. In Para-47, he had disclosed that none of the sasuralwala were weeping. Police was present since before. Police had taken statement of his father whereupon his father had filed written report. He is unable to disclose exact time, but on the basis thereof, all the accused persons were apprehended. At Paras-53, 54, there happens to be contradiction and to some extent is found corroborated by the I.O. (PW-6) of Paras-10,

11.

26. PW-2 is Vishwajit Singh, who happens to be the cousin brother of the deceased. He deposed that She was married in the year 2012. After marriage, she had gone to her sasural Shahkund. On 14.04.2012, while he was at his house, Piyush Kumar Singh had informed at his house that deceased was done to death by her husband, father-in-law, mother-in-law, sister-in-law whereupon all the family members including others rushed and reached at that very place at about 10.00 a.m. where they saw dead body of Khushbu. There was sign over her neck as well as face. Sasuralwala of Khushbu Kumari were present there and were apprehended by the police. Dead body was taken away by them for post mortem. The sasuralwala of Khushbu Kumari demanded Bolero Jeep and for that, she was murdered. During cross-examination at Para-4, he had stated that he happens to be cousin brother. In Para-5, he had stated that Piyush had disclosed regarding occurrence over phone. He had narrated the whole incident. In Para-6, he had stated that he cannot say when Piyush had telephoned. He had not telephoned at his place. In Para-7, he (Piyush) had telephoned. After receiving telephone, all the family members of Piyush began to cry whereupon he had gone to the house of Piyush where he was told by the family members about the occurrence. In Para-8, he had further stated that at that very time, he was at his house, alone. In Para-10, he said that none of the female folk had gone to Shahkund. When they reached at Shahkund, they found dead body of Khushbu Kumari. At that very time, all the family members were present there. In Para-11, he had stated that they had not found blood over her body as well as bed. Then thereafter, they have gone to Police Station. They reached at 11.00-11.30. At Para-12, he stated that when they reached at the police station, they found all the family members (in laws) of deceased locked up. He gave his statement. From Para-16 to 24, there happens to be cross-examination relating to Pintu. In Para-25, there happens to be contradiction, which is found corroborated from the evidence of PW-6 in

Para-17.

27. PW-4 is Sintu Diwakar, full brother of deceased, had deposed that on 14.04.2012, they made call over mobile of Piyush, which was switched off. Piyush had gone to Shahkund for Bidai of his sister Khushbu on 12.04.2012. They had also called the sasuralwala of Khushbu, who did not receive the call and on account thereof, became suspicious, whereupon they had gone there. When they reached, they found police. They have gone inside the room and found his sister lying over bed. There was sign of mark over her head as well as below chin. There was also sign over neck, his sister was dead. Soni Kumari, Moni Kumari, Putul were there. Police had confined husband of his sister. Father-in-law of sister was not present. They enquired from Soni, Moni and Putul, but could not get any response. His brother Piyush Kumar had disclosed that his sister was murdered by them on account of non-providing Bolero. During cross-examination, from Para-9 to 12, there happens to be cross-examination relating to Pintu. At Para-13, he had stated that he had not talked with Piyush upto 8.00-9.00 a.m. on 14.04.2012. He had not talked upto 8.00 a.m. whereupon, they proceeded towards sasural of his sister. At 9.00-9.30, they had reached at the sasural of his sister where police was present. His brother Piyush was also present. He had seen his brother weeping. Piyush accompanied them inside the room where deceased was lying over a bed. Police had not prepared any kind of document in his presence. However, snap of the dead body was taken. In Para-21, he had stated that police had confined husband and other family members of his sister. He is not aware whether his father had given fard-bayan or not. Dead body of his sister was taken away by the police along with accused, they also accompanied. In Para-28, there happens to be contradiction found from the evidence of PW-6 at Para-

14.

28. PW-6 is the Investigating Officer, who had deposed that on 14.04.2012, he was posted as A.S.I. at Shahkund P.S. After receipt of written report of Naveen Prasad Singh, a case was registered whereupon he took up investigation. He had further deposed that while he was at Police Station, he received rumour regarding the occurrence whereupon had gone to place of occurrence, prepared inquest report, prepared seizure list relating to plastic string. During course of inquest, he had seen injury over the deceased as well as black mark over neck. He had also found presence of Sachchidanand Singh, Shiv Shankar Singh, Soni, Moni, Putul, Urmila. He had visited the place of occurrence, which happens to be a room of the deceased. The house belonged to Sachchidanand Singh. Dead body was lying over bed. He further identified the P.O. with definite boundary, received post mortem report, recorded statement of the witnesses and after concluding the same, submitted chargesheet. During cross-examination at Para-3, he had deposed that no photography was done. He had further stated that rumour was entered in station diary. In Para-5, he had received written report at 11.30 a.m. while inquest report was prepared at 8.30 a.m., seizure list was prepared at 9.00 a.m. At 12.30 p.m. dead body was sent for post mortem. At about 1.00 p.m., accused persons were apprehended and were taken to police station. He had not mentioned in the case diary, who had shown the place of occurrence. In Para-6, he had detailed the place of occurrence whereunder he had stated that ceiling fan was fixed over bed of the deceased. In Para-7, he had stated that he had not recorded statement of the persons having their houses in the boundary. Then there happens to be contradiction.

29. DW-1 is Japan Singh, who had deposed that on 14.04.2012 at 7.30 a.m. while he was at Shahkund Bazar, he heard rumour regarding death of daughter-in-law of Sachchidanand Singh over which he reached to his place where he found all the family members of Sachchidanand Singh were weeping. He also came to know that Sachchidanand Singh had gone to police station where police had detained him. He also came to know that Sachchidanand Singh had informed Naiharwala of his daughter-in-law. Police came after his arrival at the place of Sachchidanand Singh. Police took away all the family members along with dead body. Police had prepared seizure list over which he along with Sunil Singh had signed (exhibited). He also came to know that daughter-in-law of Sachchidanand Singh was eager for higher study, which was not allowed as a result of which she committed suicide. During cross- examination, he had stated that he reached at the house of Sachchidanand Singh at 7.30 a.m. and remained there upto 11.00a.m. Sunil Singh had informed regarding death of daughter-in-law of Sachchidanand Singh. In Para-3, he had stated that Shiv Shankar Singh had informed him that Sachchidanand Singh had informed Naiharwala of deceased.

30. From the station diary (Exhibit-A), it is evident that police had recorded Station Diary Entry No.238 at 8.10 a.m. to the effect that after receiving confidential information regarding death of youngest daughter-in-law of Sachchidanand Singh, they proceeded in order to conduct an inquiry. Another Sanha No.239, which has been recorded at 8.30 a.m. discloses that Maikawala of deceased have come and they were obstructing in lifting the dead body of deceased saying that after arrival of son, the dead body will be allowed to lift. Another exhibit happens to be order of Karnataka High Court relating to Criminal Petition No.7891 of 2013, filed on behalf of Pintu Singh for grant of bail and in likewise manner, remaining exhibits relate with Pintu Singh, who happens to be on litigating term with his wife Reena Devi.

31. After meticulous examination of the prosecution as well as defence witnesses, it is crystal clear that death of deceased Khushbu is not at all denied. Furthermore, it is also apparent that presence of police before arrival of the prosecution party is also not controverted. It is also to be considered that during cross-examination of the I.O., PW-6, the defence kept mum, more particularly relating to objective finding, suggesting it a case of suicide nor even suggestion has been given at the end of the appellants that there was table, chair kept over the bed which could have facilitated the deceased for committing suicide, presence of any sign over ceiling fan, the height in between the bed and ceiling fan along with an explanation relating to other injuries, which were present over the dead body of Khushbu identified by the doctor (PW-7) to be ante-mortem in nature. In likewise manner, neither the Exhibit-A, Station Diary Entry suggests presence of Sachchidanand Singh, father-in-law of deceased at the police station, having been detained by the police and in likewise manner, failure at the part of the defence to suggest the I.O., PW-6 that Sachchidanand Singh had gone to police station to inform the police, who was detained and further, the manner of apprehension of Sachchidanand Singh. Contrary to it, PW-6 had deposed otherwise disclosing presence of all the family members at house, even though, the same has been introduced by DW-1, who happens to be resident of different village and who had on that very score, happens to be hearsay witness, whereupon is found completely erased on account of being inadmissible. However, his presence is there on account of being one of the seizure list witnesses.

32. From the uncontroverted status of instant case, it is apparent that death was committed in a room of a house belonging to the accused persons where deceased was staying on account of being married few months ago with appellant Shiv Shankar Singh, who was present. It is also apparent from the evidence of PW-7 that deceased had died on account of strangulation coupled with presence of other injuries being ante-mortem in nature. Even considering that there happens to be inconsistency at the end of the prosecution witnesses on account of demand as well as torture relating thereto which did not justify the finding of the learned lower Court being a case of dowry death, rather, it suggest a case of murder, and to that extent the prosecution substantiated, which the learned lower Court completely ignored, and in the aforesaid background, the accused persons were under obligation to explain the same under Section 106 of the Evidence Act as it relates with an event having under their exclusive knowledge committed within four corner of the house.

33. In Shambhu Nath Mehra vs. the State of Ajmer reported in A.I.R. 1956 SC 404, it has been held:-

> "11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.
>
> It is evident that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. the King, 1936 PC 169 (AIR V 23) (A) and Seneviratne v. R, 1936-3 All ER 36 at p.49 (B)."

34. In State of West Bengal vs. Mir Mohammad Omar and others reported in (2000) 8 SCC 382, it has been held:-

> "33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case."

35. In Tulshiram Sahadu Suryawanshi and another vs. State of Maharashtra reported in (2012) 10 SCC 373, it has been observed:-

> "23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case.
>
> In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it 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. It is useful to quote the following observation in State of West Bengal vs. Mir Mohammed Omar, (2000) 8 SCC 382:
>
> "38. Vivian Bose, J., had observed that 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. In Shambhu Nath Mehra v. State of Ajmer AIR 1956 SC 404, the learned Judge has stated the legal principle thus:
>
> „11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are „especially within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word „especially stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."

36. In State of Rajasthan vs. Thakur Singh reported in (2014) 12 SCC 211, it has been held:-

> 15. We find that the High Court has not at all considered the provisions of Section 106 of the Evidence Act, 1872. 106. Burden of proving fact especially within knowledge.--When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him." This section provides, inter alia, that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him.

16. Way back in Shambhu Nath Mehra v. State of Ajmer AIR 1956 SC 404, this Court dealt with the interpretation of Section 106 of the Evidence Act and held that the section is not intended to shift the burden of proof (in respect of a crime) on the accused but to take care of a situation where a fact is known only to the accused and it is well nigh impossible or extremely difficult for the prosecution to prove that fact. It was said:

> "11. This [Section 101] lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not."

(emphasis supplied)

17. In a specific instance in Trimukh Maroti Kirkan v. State of Maharashtra (2006)10 SCC 681, this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said:

> "22. Where an accused 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 home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

18. Reliance was placed by this Court on Ganeshlal v. State of Maharashtra (1992) 3 SCC 106 in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal

Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in Dnyaneshwar v. State of Maharashtra (2007) 10 SCC 445, this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In Jagdish v. State of Madhya Pradesh (2009) 9 SCC 495, this Court observed as follows:

> "22. ....It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."

21. More recently, in Gian Chand v. State of Haryana (2013) 14 SCC 420, a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in Shambhu Nath Mehra AIR 1956 SC 404, was reiterated. One of the decisions cited in Gian Chand (2013) 14 SCC 420, is that of State of West Bengal v. Mir Mohammad Omar (2000) 8 SCC 382, which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act in the following words:

> "35. During arguments we put a question to learned Senior Counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. Learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise."

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room.

Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar s death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.

37. In Harijan Bhala Teja vs. State of Gujarat reported in (2016) 12 SCC 665, it has been held:-

> "16. Modi s Medical Jurisprudence and Toxicology on strangulation explains that strangulation can be defined as the compression of the neck by a force other than hanging. 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. On internal injuries Modi s Medical Jurisprudence says that it should be noted that the hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation.
>
> 17. In Mandhari v. State of Chattisgarh (2002) 4 SCC 308, while appreciating somewhat similar facts, this Court observed as under: -
>
> "4. ..... The post-mortem report prepared on autopsy conducted by Dr P.C. Jain (PW 8) shows that there was ligature mark on the neck of the deceased which was ante-mortem. The opinion of the doctor is clear and definite that such ligature mark of 5 cm width in horizontal position cannot be caused by hanging but could have been caused by strangulation. Medical evidence, therefore, completely falsifies the case of the appellant that on his return from the field to his house he had found his wife hanging and thus she had committed suicide. The conduct of the accused is also not natural. When he found his wife hanging by the neck, he neither raised any hue and cry nor called any villagers living nearby. He all alone brought down the body hanging from the roof. He thereafter did not report the matter immediately. When villagers collected, he took a plea that she had committed suicide. He also did not report the matter on his own but, as is deposed by Dilboodh (PW 2), Kotwar, it is on his insistence and of the Sarpanch that he reported the matter to the police. These witnesses also stated that the wife had complained in the past to the Panchayat that the appellant was ill-treating her and was not providing her food.
>
> 5. After hearing learned counsel appearing and on going through the record, we find no ground to take a different view of the evidence. The accused in his examination under Section 313 CrPC had admitted that he was in the house and on hearing a

> sound had rushed to find his wife hanging by the neck. His defence that his wife committed suicide has been found to be false and the same is not corroborated by medical evidence. The above facts coupled with the circumstances that they were not leading a congenial marital life, the unnatural conduct of the accused subsequent to the incident, the spot map (Ext. 7) showing the rafter of the roof to be at such height as was unapproachable for committing suicide -- cumulatively lead only to one irresistible conclusion that the accused alone was the author of the crime and had taken a false defence that he had seen the deceased to have committed suicide by hanging herself."

.....

19. Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly, when the prosecution has successfully proved that she died homicidal death."

38. In Jamnadas vs. State of M.P. With Manoj vs. State of M.P. reported in 2016 CRI.L.J. 3668, it has been held:-

> "18. We have considered the above submissions in the light of evidence on the record, and the law laid down by this Court applicable to such cases. Undoubtedly, it is a case of circumstantial evidence. In Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116, a three-Judge Bench of this Court has laid down the law as to when in a case of circumstantial evidence charge can be said to have been established. Five points enumerated in said case are summarized as under:
>
> -
>
> (i) The circumstances from which the conclusion of guilt is drawn should be fully established. 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;

(ii) 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;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) 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.

19. On behalf of the appellants, it is submitted that the accused has a right to silence and no adverse inference can be drawn from his silence as to the cause of death of the deceased. In this connection, reliance is placed on paragraph 141 of Selvi and others v. State of Karnataka (2010)7 SCC 263, which reads as under: -

> "141. At this juncture, it must be reiterated that Indian law incorporates the "rule against adverse inferences from silence" which is operative at the trial stage. As mentioned earlier, this position is embodied in a conjunctive reading of Article 20(3) of the Constitution and Sections 161(2), 313(3) and proviso (b) of Section 315(1) CrPC. The gist of this position is that even though an accused is a competent witness in his/her own trial, he/she cannot be compelled to answer questions that could expose him/her to incrimination and the trial Judge cannot draw adverse inferences from the refusal to do so. This position is cemented by prohibiting any of the parties from commenting on the failure of the accused to give evidence. This rule was lucidly explained in the English case of Woolmington v. Director of Public Prosecutions (1935 AC 462 :
>
> 1935 All ER Rep 1 (HL)), AC at p. 481:
>
> "The „right to silence is a principle of common law and it means that normally courts or tribunals of fact should not be invited or encouraged to conclude, by parties or prosecutors, that a suspect or an accused is guilty merely because he has refused to respond to questions put to him by the police or by the Court."

Above observations are made by this Court in an answer to the legal question raised in the batch of criminal appeals relating to the involuntary administration of certain scientific techniques, namely, narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases. In the present case facts and circumstances are different. The above referred case, in our opinion, is of little help to the appellants in the present case.

20. In State of W.B. v. Mir Mohammad Omar and others (2000) 8 SCC 382, this Court, while interpreting the burden of extent of proof on prosecution, observed as under: -

> "31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries

and the society would be the casualty.

xxx xxx xxx

36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

37. The section 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."

21. Shri S.K. Jain, learned senior counsel, on behalf of the appellants drew our attention to the case of Tomaso Bruno and another v. State of Uttar Pradesh (2015) 7 SCC 178, and argued that to invoke Section 106 of the Evidence Act the prosecution must have proved presence of the appellants in their house at the time of the incident. We have carefully gone through the case cited before us. It was a case where CCTV footage of the hotel was available but not produced to show the presence of the accused in the hotel and, as such, the plea of alibi that the accused had gone to witness "Subah-e-Bararas" from the hotel was accepted. The present case relates to a different kind of incident where a bride has been brutally murdered inside the house and her body, after cutting into pieces, was thrown in the park.

22. In Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681, which is a case similar in nature to the present one, this Court has held as under: -

"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."

.....

24. In response to above Shri C.D. Singh, learned counsel for the State of Madhya Pradesh has referred to the case of Suresh and another v. State of Haryana (2015) 2 SCC 227, wherein, discussing the issue in paragraph 19, this Court observed: -

> "9. .....No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused....."

25. Undoubtedly, as proved on the record in the present case the deceased was murdered inside the house and her body was thrown in the park, and was not missing from the house after going to her relative s place, as pleaded by the appellants in their statements under Section 313 of the Code of Criminal Procedure. They have taken a blatant false plea.

26. In Kuldeep Singh and others v. State of Rajasthan (2000) 5 SCC 7, in paragraph 18 a three-Judge Bench of this Court has held that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue, then the same offers an additional link in the chain of circumstances, to complete the chain.

27. Similar view has been taken by this Court in Rumi Bora Dutta v. State of Assam (2013) 7 SCC 417, wherein it has been accepted that a false answer offered by the accused when his attention is drawn to the circumstances, it renders a circumstance to be of inculpating nature, i.e. in such a situation a false answer can also be counted as providing a missing link for completing the chain.

28. In an answer to above, the appellants have placed reliance on Rajkumar v. State of M.P. (2004) 12 SCC 77, wherein it has been held that mere false plea does not absolve the prosecution of burden to connect the accused with the crime. On careful reading of the case referred to above, we find that it was a case where two views were possible, and the trial court took the view that charge cannot be said to have been proved, but the High Court reversed it. In the case at hand there is consistent view taken by both the courts below that the appellants had acted in common intention with co-accused Dhanwantari in commission of murder of the deceased."

Said view has also been followed in Raj Kumar Prasad Tamarkar vs. State of Bihar (2007) 10 SCC 433, State of Rajasthan vs. Jaggu Ram reported in (2008) 12 SCC 51, Sushil Kumar vs. State of Punjab reported in (2009) 10 SCC 434, Swamy Shraddananda @ Murali vs. State of Karnataka reported in (2008) 13 SCC 767.

39. After critical analysis of the materials, the following circumstances visualizes:-

a) Marriage of deceased with Shiv Shankar Singh few months prior to her death.

b) Deceased was murdered while staying at her sasural.

c) She was murdered on account of homicidal ante-mortem injuries.

d) There happens to be no denial at the end of the accused that they were not present, rather they all were arrested by the police on the same day from their place.

> e) There happens to be no positive evidence or to the extent of preponderance of probabilities regarding suicide, though during course of statement recorded under Section 313 Cr.P.C.

only Sheoshankar Singh had stated likeso, who came down from roof where he was sleeping, after hearing alarm of his father and mother, broken the door, found the deceased hanging, cut the string, taken down the dead body without having support from his father and mother at least.

f) No cross-examination at least, PW-6, I.O. has been made to substantiate the same.

g) From the suggestion given to PW-1 as well as PW-3, presence of PW-3 at their place is not denied, and so, being a witness of occurrence.

h) No explanation has been offered regarding ante-mortem injuries.

i) Evidence of DW, coupled with Exhibit-A & B did not support the defence version, any way.

40. In the aforesaid background, it is evident that the cause of death as well as surrounding circumstances have not been explained at the end of accused. On the other hand, the evidence with regard to dowry death is found sketchy one.

41. Now, coming to the judgment impugned, as stated above, the learned lower Court had, though in Para-1 of the judgment, incorporated that charge was framed against the accused persons for an offence punishable under Section 304B as well as 302/34 of the I.P.C., but failed to discuss the evidence in its entirety in order to appreciate whether prosecution has succeeded to substantiate its case under either of the two charges whereunder trial had proceeded. The judgment impugned suggest that in pre-conceived manner, the learned lower Court dealt with the issue being a dowry death and further, acquitted the other accused while convicted the appellant thereunder. The ingredients of the judgment is clearly laid down under Section 354 of the Cr.P.C., which the Court is expected to adhere who without taking pain to observe whether the prosecution version relating to Section 302 I.P.C. has not been substantiated leading to acquittal nor recorded any finding thereto. For better appreciation, Section 354 Cr.P.C. is quoted below:-

> "354. Language and contents of judgment.
>
> (1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,-
>
> (a) shall be written in the language of the Court;
>
> (b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860), and it is doubtful under which of two sections, or under which Of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence. (4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub- section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision."

42. In Prem Kaur vs. State of Punjab and others reported in (2013) 14 SCC 653, it has been held:-

"14. The findings recorded by the courts below may be perverse for the reasons that the Trial Court did not record any sound reasoning for acquittal, though it had been the case of the prosecutrix that she remained hospitalised. She had deposed in court that she had been subjected to the aforesaid crime. The High Court had also been swayed by the reasoning recorded by the Trial Court without making much effort to find out the truth in the case.

15. In Excise & Taxation Officer-cum- Assessing Authority v. Gopi Nath & Sons, 1992 Supp. (2) SCC 312, this Court held that:

"7. ... if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse,

> then, the finding is rendered infirm in law."

16. In Triveni Rubber & Plastics v.

Collector of Central Excise, Cochin, AIR 1994 SC 1341, this Court held that an order suffers from perversity, if relevant piece of evidence has not been considered or if certain inadmissible material has been taken into consideration or where it can be said that the findings of the authorities are based on no evidence at all or if they are so perverse that no reasonable person would have arrived at those findings. In Kuldeep Singh v. Commissioner of Police & Ors., AIR 1999 SC 677, this Court while re-iterating the same view added that:

> "10. ... if there is some evidence on record which is acceptable and which could be relied upon, howsoever, compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

17. In Gaya Din & Ors. v. Hanuman Prasad & Ors., AIR 2001 SC 386, this Court further added that an order is perverse, if it suffers from the vice of procedural irregularity.

18. In Rajinder Kumar Kindra v. Delhi Administration, AIR 1984 SC 1805, the Court while dealing with a case of disciplinary proceedings against an employee considered the issue and held as under-

> "17. It is equally well-settled that where a quasi- judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. ....they disclose total non-application of mind.... The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence."

19. This Court in Satyavir Singh v. State of Uttar Pradesh, (2010) 3 SCC 174, held :

> "21. ...Perverse' was stated to be behaviour which most of the people would take as wrong, unacceptable, unreasonable and a 'perverse' verdict may probably be defined as one that is not only against the weight of the evidence but is altogether against the evidence. Besides, a finding being 'perverse', it could also suffer from the infirmity of distorted conclusions and glaring mistakes."

20. If the judgments of the courts below are examined in the light of the aforesaid settled legal proposition, the same have to be labelled as suffering from perversity.

21. The Trial Court did not decide the case giving adherence to the provisions of Section 354 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'). The said provisions provide for a particular procedure and style to be followed while delivering a judgment in a criminal case and such format includes a reference to the points for determination, the decision thereon, and

the reasons for the decision, as pronouncing a final order without a reasoned judgment may not be valid, having sanctity in the eyes of the law. The judgment must show proper application of the mind of the Presiding Officer of the court, and that there was proper evaluation of all the evidence on record, and the conclusion is based on such appreciation/evaluation of evidence. Thus, every court is duty bound to state reasons for its conclusions.

22. In State of Punjab v. Jagir Singh Baljit Singh & Karam Singh, AIR 1973 SC 2407, this Court held as under:

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

23. In Mukhtiar Singh & Anr. v. State of Punjab, AIR 1995 SC 686, this Court emphasised on the compliance of the statutory requirement of Section 354 Cr.P.C., observing as under:

> "10. ....same is far from satisfactory. Both, the order of acquittal as well as the order of conviction, have been made by the trial Court in a most perfunctory manner without even noticing much less, considering and discussing the evidence led by the prosecution or the arguments raised at the bar....It was in paragraphs 28 to 32, noticed above, that the orders of acquittal and conviction were made. The trial Court was dealing with a serious case of murder. It was expected of it to notice and scrutinize the evidence and after considering the submissions raised at the bar arrive at appropriate findings..... There is no mention in the judgment as to what various witnesses deposed at the trial, except for the evidence of the medical witness. The judgment does not disclose as to what was argued before it on behalf of the prosecution and the defence. The judgment is so infirm.....The trial Court appears to have been blissfully ignorant of the requirements of Section 354(i)(b) Cr. P.C. Since, the first appeal lay to this Court, the trial Court should have reproduced and discussed at least the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate Court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the 'conclusion' - it embraces / within its fold the reasons which form the basis for arriving at the 'conclusions'. The judgment of the trial Court contains only the 'conclusions' and nothing more. The judgment of the trial Court cannot, therefore, be sustained. The case needs to be remanded to the trial Court for its fresh disposal by writing a fresh judgment in accordance with law." (Emphasis added)

24. Thus, in view of the above, the law can be laid down that the court must give reasons for reaching its conclusions. The courts below have dealt with the matter in a very summary fashion. The statements of reasons, for the conclusion reached by them, which could have been more enlightening, are missing. The judgments of the courts below do not comply with the requirement of the statutory provisions as laid down in Cr.P.C. The view taken by the courts below is manifestly unreasonable and has resulted in miscarriage of justice. The courts ought not to have given the defective and cryptic judgment. In fact it is no judgment in the eyes of the law. We are not in a position to judge the correctness, legality and propriety of the findings recorded by the courts below. The absence of sound reasons is not a mere irregularity, but a patent illegality.

25. We are aghast at the judicial insensitiveness shown by the Trial Court, and we find it no less, at the level of the High Court. The view taken by the Trial Court, that the father and son cannot rape a victim together, may in itself cannot be a ground of absolute improbability, however, it may fall within the realm of rarest of rare cases. Whether the allegation is correct or not, has to be examined on the basis of the evidence on record and such an issue cannot be decided merely by observing that it is improbable.

26. We cannot approve the manner in which the courts below dealt with the case. The appeal succeeds and is allowed. Thus, the judgments of the courts below are set aside and the case is remanded to the Trial Court to decide afresh on the basis of the evidence/material on record.

43. In Oma @ Omprakash and another vs. State of Tamil Nadu reported in (2013) 3 SCC 440, it has been held:-

> "53. In Hindustan Times Ltd. v. Union of India and Others (1998) 2 SCC 242, a two-Judge Bench of this Court referred to an article On Writing Judgments, by Justice Michael Kirby of Australia (1990) 64 ALJ 691 (Aust) wherein it has been highlighted, apart from any facet that the legal profession is entitled to have, it demonstrated that the Judge has the correct principles in mind, has properly applied them and is entitled to examine the body of the judgment for the learning and precedent that they provide and further reassurance of the quality of the judiciary which is the centre-piece of our administration of justice.

Thus, the fundamental requirement is that a Judge presiding over a criminal trial has the sacrosanct duty to demonstrate that he applies the correct principles of law to the facts regard being had to the precedents in the field. A Judge trying a criminal case has a sacred duty to appreciate the evidence in a seemly manner and is not to be governed by any kind of individual philosophy, abstract concepts, conjectures and surmises and should never be influenced by some observations or speeches made in certain quarters of the society but not in binding judicial precedents. He should entirely ostracise prejudice and bias. The bias need not be personal but may be an opinionated bias.

54. It is the Judge s obligation to understand and appreciate the case of the prosecution and the plea of the defense in proper perspective, address to the points involved for determination and consider the material and evidence brought on record to substantiate the allegations and record his

reasons with sobriety sans emotion. He must constantly keep in mind that every citizen of this country is entitled to a fair trial and further if a conviction is recorded it has to be based on the guided parameters of law. And, more importantly, when sentence is imposed, it has to be based on sound legal principles, regard being had to the command of the statute, nature of the offence, collective cry and anguish of the victims and, above all, the "collective conscience" and doctrine of proportionality. Neither his vanity nor his pride of learning in other fields should influence his decision or imposition of sentence. He must practise the conscience of intellectual honesty and deal with the matter with all the experience and humility at his command. He should remind himself that some learning does not educate a man and definitely not a Judge. The learning has to be applied with conviction which is based on proper rationale and without forgetting that human nature has imperfect expression when founded bereft of legal principle. He should not usher in his individual satisfaction but adjudge on objective parameters failing which the whole exercise is likely to be named "monstrous legalism". In this context, I may profitably reproduce the profound saying of Sir P. Sidney :-

> "In forming a judgment, lay your hearts void of fore-taken opinions; else, whatsoever is done or said will be measured by a wrong rule; like them who have the jaundice, to whom everything appeareth yellow."

55. In this context, I may usefully refer to the pronouncement in State of W. B. Others v.

Shivanand Pathak and Others (1998) 5 SCC 699, wherein the High Court had affirmed the death sentence imposed by the learned Sessions Judge. The High Court had commenced the judgment with the expression that it was one of the most sensational trials of the recent years and the murder is a diabolical one because the innocent persons have been killed by the police officers who were supposed to be the protectors of law-abiding citizens. Commenting on the said expression, this Court observed thus:-

> "14. ...We are constrained to observe that the High Court has not kept in view the several decisions of this Court and has not examined the circumstances proved while considering the question of sentence but on the other hand, have been swayed away with the fact that the trial is a sensational one, and therefore, the officials must be awarded the extreme penalty of death. We do not find that it is a correct appreciation of the law on the subject dealing with the award of death penalty, even if a conviction under Sections 302/34 IPC is sustained. The learned Sessions Judge also came to the conclusion that the case can be treated to be the rarest of rare cases as police officials on whose shoulders the safety of citizens lies and being the protectors of the society are accused for killing of three civilians without any provocation and resistance."

(emphasis supplied)

56. From the aforesaid, it is graphically clear that a judge, while imposing sentence, should not be swayed away with any kind of sensational aspect and individual predilections. If it is done, the same would tantamount to entering into an area of emotional labyrinth or arena of mercurial syllogism.

44. After going through the judgment impugned in consonance with the relevant provision of law as well as considering the settled principle of law, laid down by the Apex Court as discussed above, it is abundantly clear that the judgment impugned did not justify its relevance, on account of being perverse, cryptic as well as being glaring example of non-appreciation of the fact as well as law whereupon fit to be set aside as well as attracts remand to the learned lower Court to pass judgment afresh after hearing both the parties in accordance with law. But in the aforesaid circumstances, as discussed above on account of dismissal of Cr. Appeal against acquittal by the Division Bench, now question has arisen whether such exercise could be taken up and in likewise manner, affirming the judgment impugned by the Division Bench will forbid the Appellate Court to scrutinize the evidence and record its own independent finding and in likewise manner, forbids the appellant to challenge the finding and for that, the matter is referred to the Division Bench for an authoritative decision over the issue whether in exercise of appellate jurisdiction in terms of Section 386 of the Cr.P.C., a Single Judge will be legally competent enough to set aside the judgment impugned, remand the matter directing the learned lower Court to pass judgment afresh after hearing both the parties in accordance with law?

45. Office is accordingly directed to place the matter before Hon'ble the Chief Justice.

(Aditya Kumar Trivedi, J) Vikash/-

AFR/NAFR A.F.R.
CAV DATE 18.05.2017
Uploading Date 21.06.2017
Transmission 21.06.2017
Date