

Registered Fir Vide Crime No.249/2015 ... vs Thereby The Accused Has Committed The ... on 25 February, 2020

IN THE COURT OF XLV ADDL. CITY CIVIL & SESSIONS
JUDGE, BENGALURU CITY (CCH-46)

DATED THIS THE 25th DAY OF FEBRUARY, 2020

PRESENT:

Sri E. RAJEEVA GOWDA, L.L.M.
XLV Addl. City Civil & Sessions Judge, Bengaluru.

S.C. No.914/2015

BETWEEN

State by Subramanyapura Police Station,
Bangalore.

.... COMPLAINANT

(By the learned Public Prosecutor)

AND

Kemparaju C.D.
S/o Late Doddaiiah, a/a 49 years,
R/o C/o Nagesh, Vaddarapalya,
Jambu Savari Dinne,
JP Nagar VIII Phase, Bangalore City.

...ACCUSED

And also r/o Chikkakallabalu Village,
Harohalli Hobli, Chilur Post,
Kanakapura Taluk, Ramanagara District.

(By Sri C. S. Pradeep, Advocate)

JUDGMENT

The Police Inspector, Subramanyapura P.S., has submitted charge sheet against accused for the offences punishable U/s.498-A and 302 of IPC.

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2.The history of the prosecution case is as under:-

On perusal of the complaint, FIR and charge sheet reveals that accused has married

Smt. Suguna resident of Budhiguppe village, Kanakapura Taluq. Out of the wedlock they have got having two children by name Kumari Sindhu and Sagar, now aged about 18 years and 16 years respectively. Earlier, the accused, his wife and children were residing at Budhiguppe Village. After some time, the accused has shifted his family to Kanakapura and running Banana Leaf business. Since he had sustained loss in the business, hence the accused had came to Bangalore along with his family members for livelihood and started to reside in a rental house at Vaddarapalya. When accused is residing in the house of CW.13/PW.9 on rent basis located at Vaddarapalya, 8th Phase, JP Nagar, Bangalore, the accused suspecting the fidelity of his wife and daughter, has been quarreling and giving torture to them. Due to which, the deceased and her children, left the home at Bangalore and started to reside at Budhiguppe Village, Kanakapura Taluk. On 26.03.2015 at 5.30 p.m. the deceased Suguna and her daughter came to Garment Factory to receive due salary, where they were working. They were returning to their village after receiving salary, at that time, the accused has approached them and S.C. No.914/2015 assured deceased-Smt.Suguna and his children, that he will not give any sort of harassment hereafter. But Kumari-Sindhu did not believing the words of accused has returned to village, whereas, deceased-Smt.Suguna and complainant i.e., son of deceased went to the house of accused. The accused has came to house at 6.30 p.m. After his return has picked up quarrel with deceased-

Smt.Suguna by locking main door, dragged her to kitchen and assaulted with , and knife on face, stomach, chest and other parts of the body with an intention to kill the deceased and thereby caused grievous injuries. She was taken to the Hospital for treatment, where she was was died. The whole incident watched by the complainant-Sagar through the opened kitchen window. Hence, the complainant-Sagar lodged the complaint before complainant police.

The complainant police based on the complaint of complainant, registered FIR vide Crime No.249/2015 for the offense punishable U/s.302 of IPC and on 26.03.2015 the accused was apprehended from hospital and produced before the I.O./CW.25/PW.15-Mr.Manjunath.S at 11.00 p.m. The said I.O.,/CW.25/PW.15 after arresting the accused, has seized death note and clothes of accused, knife, , in the presence of panchas, and he has also conducted inquest mahazar on the dead body of deceased and recorded statement S.C. No.914/2015 of witnesses and sent the dead body for postmortem. After postmortem, the dead body was handed over to deceased son and brother and sent the viscera and Mos to FSL. Thereafter handed over further investigation to PW17/PI- Mr.Parashuramappa, who has submitted charge sheet against the accused. Thereby the accused has committed the offence as alleged against him.

3. INVESTIGATION PROCEDURE:-

On 26.03.2015 at 8.45 p.m. CW.25/PW.15 PSI of Subramanyapura P.S., while on patrolling duty had received information from NIMHANS Hospital about death of a women i.e., deceased-Suguna along with the death memo. Immediately, he reached

hospital and further received written complaint from CW.1/PW.3 Sagar. On the basis of said complaint, he registered FIR vide Subramanyapura P.S., Crime No.249/2015 and sent FIR to the Court and its copies to his superior officers. On the same day at 11.00 p.m. Head Constable CW.21/PW.13 Mr.Chikkathimmayya and CW.22/PW.11 Mr.Chidanand Murthy have produced before him along with report after getting discharge from Hospital. After completion of arrest formalities, he kept the accused in custody, and recorded statement of PW.11 and PW.13 by name Mr.Chidanand Murthy and S.C. No.914/2015 Mr.Chikkathimmayya respectively. He received documents such as Police Intimation and discharge summary of NIMHANS produced by PW.13-Mr.Chikkathimmayya were also brought into record. On the same day at 11.10 p.m secured panchas CW.15/PW.14 Prabhakar and CW.16 Mr.Balaji and conducted physical verification of accused, and seized the death note kept in the left pocket of the pant and his bloodstained clothes. Accordingly, drawn mahazar and seized articles in a separate sealed packets by putting SPS seal and affixed the signatures of panchas in chit and brought into PF No.60/2013. The bloodstained clothes have been identified and marked at MO9 to MO11. The death note found in the pant pocket of accused is not got marked by the prosecution, as the accused himself is its author. On 27.3.2015, he has carried out further investigation process as per the direction of CW.26/PW.17-Parashuramappa, Police Inspector.

On the same day at 9.00 a.m. visited the mortuary at NIMHANS Hospital, and has conducted the inquest mahazar on the dead body of deceased-Suguna as per EX.P1 between 9.00 a.m. to 11.00 a.m. by serving notice to panchas CW.2/PW.4-Smt.Keerti Kumari, CW.3-Mr.Siddharaju and CW.4/PW.1-Mr.Shivakumar and also recorded the statements of CW.5/PW.5-Mr.Prakash, CW.6/PW.6-Mr.Lingaraju, CW.7/PW.12-Kum.Sindhu and secured the photograph of the deceased through his mobile phone, and S.C. No.914/2015 brought the same into record, and sent the dead body to the KIMS Hospital through his police Staff CW.23/PW.16-Nandish with a requisition letter to conduct postmortem. After postmortem, he handed over the dead body to the son and brother of deceased and received endorsement, and recorded statement of CW.23/PW.16-Nandish. He has also enquired the accused, and recorded his voluntary statement. On the basis of voluntary statement of accused seized the material objects produced by accused at spot in the presence of CW.17/PW.2-Mr.Somashekhar and CW.18-Mr.Nagesh and conducted the mahazar. The said material objects marked at MOS 1 to 4, and produced the accused before Court along with remand application. Further he received copy of rental agreement from CW.13/PW.9-Smt.Roopa Nagesh, recorded statement of CW.14-Mr.L Srinivas. On 28.03.2015 he filed requisition to the Court to record statements of CW.1/PW.3-Mr.Sagar U/s.164 of Cr.P.C., on the same day he recorded statements of CW.8/PW.7-Mr.Satish, CW.9-Mr.Suprit Kumar, CW.10/PW.8-Smt.Shanthamma, CW.11-Mr.Shivakumar and CW.12-Mr.Siddharaju. On 30.03.2015, he received postmortem report of deceased-Suguna, on 13.05.2015 CW.23-Mr.Nandish along with report has produced the viscera collected by the Doctor, and same were brought into PF No.92/2015 and submitted to the Court. CW.23/PW.16-Mr.Nandish has also S.C. No.914/2015 produced the clothes of the deceased, and the same were brought into PF No.93/2015 and submitted to the Court. On 25.05.2015 through HC No.5072/CW.24-Mr.Rajkumar sent MOS1 to 11 for chemical examination along with requisition letter. He handed over further investigation to CW.26/PW.17- Mr.Parashuramappa Police Inspector.

CW.26/PW17- Mr.Parashuramappa has verified the almost entire investigation carried by PSI and submitted charge sheet against accused with an request to the Court to submit FSL report after its receipt.

4. COMMITTAL PROCEDURE AND FRAMING OF CHARGE, EVIDENCE OF WITNESSES AND OTHERS:

The concerned police have submitted charge sheet before the jurisdictional II Addl., CMM., Bangalore. The learned Magistrate has took cognizance for the offences punishable U/s.498A and 302 of IPC. Thereafter, he has committed the case to the Hon'ble Principal City Civil and Sessions Judge, Bangalore, by complying Sec.207 of Cr.P.C., after supplying copy of charge sheet to the accused. After committal, the Hon'ble Principal City Civil and Sessions Judge, Bangalore, has made over this case to this Court and the same was numbered as SC No.914/2015. Accused is in judicial custody.

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5. The charge was framed against the accused for the offences as alleged against him and read over to him in his knowing language. The accused has pleaded not guilty and claims to be tried.

6. The prosecution in all examined 19 witnesses as PW.1 to 19 and got marked documents at Ex.P.1 to P.36, and MOs1 to

11. The learned Public Prosecutor has gave up witnesses CW.3, Cw.9, CW.11, CW.12, CW.16, CW.18, CW.20, and CW.24 in view of the evidence of other material witnesses. The witness CW.14-L Srinivas was not examined due to failure of concerned police to execute NBW and keep present of said witness before the Court. Thereafter, the prosecution side evidence was taken as closed, with a liberty to examine the said witness CW.14-L Srinivas, if the concerned police produced the said witness before the court, before conclusion of trial.

7. After completion of prosecution side evidence, this Court has recorded the statement of accused as provided U/s.313 of Cr.P.C. The accused has denied incriminating evidence present against him, and not chosen to lead defense evidence nor submitted anything to Court. The accused has complied for Sec.437-A of Cr.P.C.

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8. THE POINTS OF ARGUMENTS CANVASSED BY THE LEARNED PUBLIC PROSECUTOR:

The learned Public Prosecutor representing the State has argued that the children and relatives of the deceased have specifically deposed regarding the harassment given by the accused suspecting fidelity of his wife and daughter. Due to which, the deceased and her children, left the company of the accused and started to reside at

Budhiguppe Village, Kanakapura Taluq. Further argued, on 26.03.2015 the deceased-Suguna and children came to garment factory where they were working earlier to receive due salary, when they were returning back to their village, the accused has approached and requested his wife and children to trust him. But the daughter-Kum. Sindhu did not believed the words of the accused and returned to the village. The deceased being the wife has reposed confidence on her husband words, hence, the deceased has went to her husband house along with her son/PW3-Mr.Sagar. On the same day at 6.30p.m the accused has picked up quarrel and assaulted his wife with the help of _____, _____ and knife by closing the main door of the house. By listening the shouting and crying of his mother, the son/ complainant-Mr.Sagar saw the incident through the window. He was not able to rescue his S.C. No.914/2015 mother as the door was locked from inside. He was shouted by seeing the incident. By listening the screaming, some persons came and entered inside the home with complainant and informed the police and 108 ambulance. The police reached spot immediately and the ambulance also came to the spot. By that time both accused and his wife deceased-Suguna were lying on ground. Both were shifted to hospital in ambulance. The deceased did not survived due to the injuries inflicted from the accused. PSI-Mr.Manjunath reached the hospital and received complaint from Mr.Sagar and proceeded with investigation and filed charge sheet. Further argued, the prosecution has succeeded in proving the guilt against the accused by placing iota and clinching evidence and prayed for punishment to the accused in accordance with law.

9. THE POINTS OF ARGUMENTS CANVASSED BY THE LEARNED ACCUSED COUNSEL:

The learned advocate for accused has argued that the evidence produced by the prosecution not corroborate with each other. The prosecution has completely failed in placing the proper and acceptable evidence to believe this accused has committed murder of his wife. Accordingly, prayed for acquittal of accused by giving benefit of doubt.

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10. Perused entire materials on record.

11. The following points that arises for decision of the case are as follows:

1. Whether the prosecution proves beyond reasonable doubt that the accused being husband of deceased-Smt.Suguna, was not maintaining the family properly, caused mental and physical harassment by suspecting her fidelity and thereby the accused has committed the offence punishable U/s.498-A of IPC?
2. Whether the prosecution proves beyond reasonable doubt that the accused being husband of deceased-Smt.Suguna, giving physical and mental harassment by

suspecting her and his daughter fidelity. On 26.03.2015 at 6.30 p.m. the accused has picked up quarrel with his wife Smt.Suguna by locking main door, dragged her to kitchen and assaulted with _____, _____ and knife on face, stomach, chest and other parts of the body with an intention to kill the deceased and caused grievous injuries. She was shifted to the Hospital for treatment, where she died and thereby the accused has committed the offence punishable U/s.302 of IPC?

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3. What Order?

12. This Court has answered the above points are as under:

Point No.1: In the Affirmative Point No.2: In the Affirmative Point No.3: As per final order for the following:-

REASONS

13. Points No.1 and 2: Both the points are taken up together for discussion as they are connected with each other to avoid repetition in the discussions.

It is an admitted fact that the deceased-Suguna is the wife of the accused and the complainant-Mr.Sagar, witness PW12- Kum.Sindhu are the children of the accused. The burden is on the prosecution to prove the ingredients of offenses to claim conviction against the accused. The prosecution is required to prove the following points in accordance with the ingredients of offenses.

i) The accused by suspecting the fidelity of the deceased and his daughter-Sindhu has been harassing the deceased for one or other reasons.

ii) On 26.03.2015 at 6.30p.m, the accused has picked up quarrel with his wife Smt.Suguna by locking the main door. He S.C. No.914/2015 has dragged her to kitchen and assaulted with _____, _____ and knife on face, stomach, chest and other parts of the body with an intention to kill the deceased and there by caused grievous injuries. Due to the injuries inflicted by the deceased, she died in the hospital due to failure of treatment.

iii)The door was broke open and shifted both the accused and the deceased to the hospital. After the death of the deceased, the complaint was registered and the accused was arrested and his clothes i.e., Mos 9 to 11 were seized in police station and his voluntary statement was recorded. On the basis of the voluntary statement of accused, the IO has visited along with the accused and panchas to the place of the incident and seized Mos 1 to 3 i.e., weapons used by accused to assault the victim and the blood present on the ground was also collected in a small plastic box i.e., Mo.4. Meanwhile, the statement of the complainant-Mr.Sagar was recorded by the

Magistrate u/s.164 of Cr.P.C, in view of the requisition submitted by the IO.

iv) The IO has recorded the statement of the witnesses after conducting inquest mahazar. The medical officer PW10-

Dr.C.Ramesh has submitted the postmortem report after completing the postmortem. Whether the said postmortem and S.C. No.914/2015 the said evidence of the witnesses corroborates with each other or not?.

14. Among the witnesses examined by the prosecution, the evidence of PW3-Mr.Sagar is very important as he is the son of accused and deceased. He is also eye witness to the alleged incident. On perusal of the said witness evidence reveals that he and his sister Kum.Sindhu and his parents i.e., accused and deceased were residing together in a rental house located at Vaddarapalya, 8th phase, JP Nagar. During their stay in rental house, his father i.e., accused was going to paint factory and his mother and sister were going to a apparels garments factory. During those days, the accused every day returning to the home in intoxicating condition and quarreling with his wife and daughter by suspecting their fidelity and giving torture to them. As the harassment went beyond control, hence, on 02.03.2015 deceased along with her daughter/PW12-Kum.Sidhu and her son/PW3-Mr.Sagar left the house of accused and started to reside in her parental house situated at Budhiguppe, Kanakapura Taluk. As such the accused was residing alone in the rental house. Such being the case, on 26.03.2015 the deceased along with her daughter and son came to Bangalore to the garment factory where she and her daughter were working to receive due salary.

S.C. No.914/2015 After receiving due salary were returning to their village at 5.30p.m. At that time, the accused has met them and requested to come back to his house. While requesting, the accused has assured his wife and children that he has changed his attitude and behavior and will not give any sort of trouble and will look after the family properly and happily. The wife has believed the words of accused but his daughter/PW12-Kum.Sindhu not trusted the words of the accused. Hence, she was returned to Budhiguppe village. This itself shows the cunningness of accused towards his family members. However, the deceased and her son gone to the rental house of accused situated at Vaddarapalya. It seems the wife has completely trusted and with hope that the accused will not repeat giving of torture did herebefore.

15. The further evidence of the complainant also discloses that at 6.3.p.m, the accused returned to the house, by that time the deceased and her son i.e., complainant already decided to go back to Budhiguppe village. When the deceased had expressed her decision to reside along with her children at Bhudiguppe village, due to which, the accused has started to shout towards the deceased and picked up quarrel. The accused has locked the door of the house and started to assault the deceased. By S.C. No.914/2015 listening the shouting and weeping of the mother, the complainant has knocked the door but the door was not opened. Hence, he reached the window of kitchen, which was kept opened and saw the assaulting of the deceased by accused with ,

(used to keep vessel while preparing ragi balls) and with knife. The deceased after receiving bleeding injuries fell down on ground, the accused was also lying on the floor. By seeing the said incident, the complainant was shouted loudly. At that time three persons came and opened

the door and entered inside along with complainant. After some time, on the basis of the information given by some public, ambulance van and also two police officials reached the spot. Both parents of complainant were shifted to hospital. According to the complainant the accused was doing drama simply lying on the floor. At 8.30 p.m. complainant came to know that his mother is dead due to the assault of accused. According to complainant his mother had received injuries on left cheek, finger, head and all over the body. He has lodged the complaint to Sub-Inspector of Police i.e., I.O., at the hospital as per EXP3. He has also identified the Mos used for the commission of the offense by the accused with an intention to kill his wife i.e., mother of the complainant. The IO/PSI/PW15/CW25-Mr.Manjunath after registering the FIR on the basis of the complaint EXP3 has moved the requisition before S.C. No.914/2015 the Magistrate to record the statements of the complainant u/s. 164 of Cr.P.C. The said statement has been got marked by the prosecution at EXP4. In the said statement given before the Magistrate by the complainant has specifically stated about the bad blood relationship between his parents and also stated the accused suspecting the fidelity of his mother and sister, has committed murder of his mother. It appears from the evidence of the complainant that if the daughter-Kum.Sindhu present with the deceased then she would have also murdered by the accused. The learned accused counsel has thoroughly cross- examined the witnesses PW3-Mr.Sagar about their arrival from the village to Bangalore to receive the due salary by the deceased and his sister-Kum.Sindhu. But, in the entire cross- examination failed to get any evidence to dis believe or to destroy the evidence of PW3/complainant with regard to harassment and assault. In the cross-examination of PW3- Mr.Sagar, the learned accused counsel though targeted to dis prove the cruelty and poor visibility through the window, as the glass of the window is obscured glass. At this stage, it is necessary to note the said piece of cross-examination, it reads as "

□obscured glass

□

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□

". The said witness has given clear and believable evidence about how he saw the incident. So far as cruelty is concerned no evidence has been brought out from the mouth of PW3 to dis believe the torture given by the accused. The complainant PW3 clearly narrated before the court that the accused giving torture every day to him, to his sister and mother. As such they left the house of the accused and residing in his mother's parental house situated at Budhiguppe village. The important evidence noted from the evidence of PW3-Mr.Sagar is that the door was locked from inside. Except the parents no other present, he has seen the incident through the kitchen window which was opened. When the complainant and others went inside the house, the accused and deceased were lying on ground. This clearly proves that the accused has assaulted the deceased with the help of Mos 1 to 3 with an motive to kill the deceased. Hence, the evidence given by PW3-Mr.Sagar has not surrounded with any doubts.

16. At this stage, it is necessary to discuss about the evidence given by PW11-Mr.Chidanand Murthy and PW13- S.C. No.914/2015 Mr.Chikkathimaiah. The both witnesses being the police official witnesses have deposed that on 26.3.2015 they were on patrolling at Jambu Sawari dinne, at that

time they received information about the quarrel between wife and husband at Vaddarapalya. Immediately, they reached the spot and they noticed accused and deceased were lying on the ground inside the house and the said deceased had sustained multiple blood injuries on her body. They have shifted the deceased and the accused in the 108 ambulance to the NIMHANS Hospital, at 8.30 p.m the Doctors of the said hospital informed the death of the deceased-Mt.Suguna along with death intimation. Immediately, they conveyed the said information to the PSI/CW25/PW15-Mr.Manjunath. The said PSI has reached the hospital and received complaint from the complainant PW3-Mr.Sagar. The said PSI went to Police Station to register Crime. Thereafter, the accused was taken to the police station by said PW.11 and PW.13 from the hospital and produced before the PSI i.e., IO. The learned accused counsel has cross-examined the witness PW11-Chidanand Murthy. In the cross-examination of the said witness has specifically stated that they saw the accused on 26.03.2015 at about 6.45 p.m at the place of the incident along with the deceased. Also stated that the deceased has also sustained multiple injuries and her clothes were bloodstained. The S.C. No.914/2015 remaining evidence of the said witnesses has denied by the accused counsel. Whereas, the evidence given by the witnesses PW13-Mr.Chikkathimmaiah, who was also accompanied PW11 to the spot is remained un-challenged and un-disputed. The accused counsel has not cross-examined the said witness. The said PW13 has also categorically stated about reaching the place of incident after receipt of information when they were on patrolling duty in Hoysala Jeep at Jambu Sawari Dinne. After noticing the injured victim and the accused, shifted them in 108 ambulance to the NIMHANS Hospital. After the death intimation of deceased, the PSI i.e.,IO reached the hospital and received complaint from the complainant-Mr.Sagar. The further evidence of the said witness shows that he and PW11 got discharged the accused at 11 p.m from the hospital and produced before the IO/PSI-Mr.Manjunath. According to his evidence he has submitted report as per EXP6 to the IO and he has also identified the photos of the deceased marked at EXP7 to EXP12. As already discussed above the evidence given by the said witnesses is Un-disputed and Un-challenged by the accused counsel. Such being the case the documents of the NIMHANS Hospital, such as police intimations marked at EX.P14 and EX.P15 shows that both the deceased and accused were admitted on 26.03.2015 in the casualty wing of the hospital located at ground floor and provided S.C. No.914/2015 treatment. EX.P16 is being the case records of the accused-Kemparaju shows that he was having abdominal pain, 2 c.m cut wound on left ulna. The said document EX.P14 to P.16 also supports the evidence of the complainant and the witnesses PW.11 and PW.13 and support the commission of murder of the victim by the accused. So the evidence given by the police official witnesses PW.11 and PW.13 not surrounded with any doubts.

17. It is pertinent to note that the witnesses PW.5-Mr.Prakash, PW.6-Mr.Lingaraju, PW.7-Mr.Satish, PW.8-Shantamma and PW.12- Kum.Sindhu being hearsay witnesses have given clear evidence about receiving of information from the witnesses PW3-Mr.Sagar and also about the incident held on 26.03.2015. The said witnesses being the brothers, close relatives, sister and daughter of the deceased-Suguna, specifically stated about their reach to the hospital, where PW3-Mr.Sagar has narrated how the incident was taken place and also about the assault of deceased by the accused. The witnesses PW.5 to PW.8 are being close relatives of the deceased given clear evidence about assault of Smt.Suguna by the accused with Mo 1 to 3. The said incident was taken place in the presence of PW3-Mr.Sagar. Especially, the witness Kum.Sindhu being the daughter of the accused and deceased has S.C. No.914/2015 stated about their visit to the garment factory on 26.03.2015 to

receive due salary. On same day at about 5.30p.m when they were going back to their village Bhudiguppe from Vaddarapalya, the accused has met and given assurance that he will not consume alcohol and requested them to return home. As already discussed above, the said witness PW12-Kum.Sindhu not believing the words of the accused returned to the village. She has further deposed about the incident and also about the recording of statements by the police. In the cross-examination also the said witnesses PW.5-Mr.Prakash-cousin brother of the deceased, PW6.-Mr.Lingaraju-Younger brother of the deceased, PW.7-Mr.Satish-nephew of the deceased, PW.8-Smt.Shantamma- younger sister of the deceased and PW.12-Kum.Sidhu-daughter of the deceased-Suguna have given evidence according to their statements. The answer elicited in the cross-examination of the said witnesses not shaken the case of the prosecution nor dis prove their evidence. The evidence given by the said witnesses clearly supports the case of the prosecution. Hence, there is no reason to dis believe the evidence of the said witnesses.

18. At this stage this court has required to discuss about the evidence of PW.9-Smt.Roopu Nagesh who is the owner of the house, in which this accused was residing along with the S.C. No.914/2015 deceased, and his children i.e., PW3-Mr.Sagar and PW12- Kum.Sindhu respectively. The evidence of said witness PW9- Smt.Roopu Nagesh shows that she is having six residential house. The accused has received the house on rental basis on 29.09.2014 by paying advance amount of Rs.10,000/- and agreed to pay monthly rent of Rs.3,000/-. Accordingly, they have entered into rental agreement. The said rental agreement has got marked by the prosecution at EXP5. This shows both accused and owner of the house PW9 entered into lease agreement and the accused was residing along with deceased and her children in the said house. The further evidence of the said witness PW9 shows that the deceased-suguna died in the hospital, due to assault by the accused. The evidence of PW.9-owner of the house is also remained as un-challenged and un-disputed by the accused counsel. Such being the case after the incident, the PSI has registered the complaint as per EXP3. Thereafter, he has conducted inquest mahazar as per EXP1 in the presence of panchas. The evidence given by the PSI shows that he has not only conducted inquest mahazar but during the time of conducting inquest mahazar has also recorded the statement of the witnesses PW5, PW6 and PW12.

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19. The signatory of the said inquest mahazar Mr.Shivakumar and Smt. Keertikumari examined as PW1 and PW4 respectively, were also examined by the prosecution. The evidence given by PW1-Mr.Shivakumar stated about the injuries sustained by the deceased, to the police. PW1 being the cousin brother of the deceased and signatory to the inquest mahazar EXP1, has supported the prosecution story about conducting of inquest mahazar. During cross-examination of accused counsel, he has failed to give proper evidence to show what is the reason for the the sustaining of injuries by the deceased and he did not know the contents of EXP1 inquest mahazar and police have not given any notice. The said evidence given by the witness PW1- Mr.Shivakumar destroys his chief examination and creates doubts about his presence at the time of conducting inquest mahazar. The another witness PW4-Smt.Keertikumari is another signatory to the inquest mahazar has supported the conducting of inquest mahazar by deposing sustaining injuries of the deceased-Suguna. She has denied seeing only the face of the deceased. She has also denied signing of inquest mahazar at police station. Except that nothing was brought out by the accused counsel through the said witness PW4.

So the evidence given by the said witness PW4-Keertikumari corroborates with the evidence given by IO/PW15-Mr.Manjunath about conducting of inquest mahazar S.C. No.914/2015 after issuing of notice as per EXP18. As already discussed above the PSI-Mr.Manjunath being IO has categorically deposed regarding conducting of inquest mahazar on the dead body of the deceased-Suguna at hospital after giving notice to panchas as per EX.P18. Even otherwise, as already discussed above the death of the deceased and sustaining of injuries by the deceased is admitted fact. Hence, there is no reason to disbelieve the evidence given by the panchas PW4 and also PSI/PW.15. So the prosecution has proved the inquest mahazar by placing cogent oral and documentary evidence through IO and PW.4-Smt.Keerti Kumari.

20. As already discussed above, on the basis of the complaint lodged by the complainant-Mr.Sagar, the IO/PW.15-Mr.Manjunath has registered crime No.249/2015 at 9.45 p.m, prior to that he received death memo from NIMHANS Hospital as per EX.P14. On same day at 11p.m, the police official witnesses PW.11- Mr.Chidanand Murthy and PW.13-Mr.Chikkathimaiah have got discharged the accused and produced before IO. Accordingly submitted report as per EX.P6. The both police official witnesses PW.11 and PW.13 have also produced police intimation and discharge summary received from the hospital marked at EX.P15 and P16. The IO/PW.15 immediately secured the panchas PW.14- S.C. No.914/2015 Mr.Prabhakar and CW.16-Mr.Balaji for the purpose of panchanama. Among those two panchas, the prosecution examined Mr-Prabhakar as PW.14 and gave up another pancha CW.16-Mr.Balaji. The IO PW.15 has clearly deposed about conducting of panchanama after completing physical verification of the accused. The said IO has seized bloodstained shirt, pant and baniyan and also death note present in the pocket of pant. He has seized the said Mos under mahazar marked at EX.P13 and also brought the said Mos in PF No.60/2013, which is marked at EX.P17. Such being the case the seizure pancha by name Mr.Prabhakar has supported conducting of panchanama by the police on 26.03.2015. He has also stated that the police have seized bloodstained pant, shirt and baniyan under panchanama marked at EX.P13. The said witness has also identified the said seized Mos marked at Mo.9 to 11. According to him the police have also seized a paper found in the pant pocket of accused. During cross-examination of accused counsel, the said pancha has categorically answered that the clothes are belongs to the accused. The suggestions of the accused counsel itself shows that the said pancha went to police station and signed the mahazar though the cross-examination discloses that the police may not conducted mahazar in his presence. If the evidence of S.C. No.914/2015 the IO and PW.14 read together, which clearly proved conducting of mahazar by the police and seizure of Mo 9 to 11.

21. It is pertinent to note that the death note secured from the possession of the accused discloses his annoyance or wrath towards his family members. The said document also shows that the accused has been suspecting the fidelity of his wife and daughter. He has more indignity towards his daughter than his son. The careful reading of said death note it could be presume that the accused wanted to end his life. In addition to that he had boredom towards his wife and daughter. Due to which, he had developed motive to finish or put full stop to the life of his wife and daughter. It is necessary to note the contents of death note found in pocket of accused, which reads as under:

,
18.06.1995 , 1.
2. ,
□ ,
3
S.C. No.914/2015 , 4
9743811678 ,
w/o , 01.03.2015
02.03.2015
18.06.1995
i . . ,
 , ,

The said above document speaks the enmity of accused towards his family and also doubted the character of his family members. So, the accused has decided to take away the life of his wife by causing greivious injuries. Suppose if his daughter was present at that time of incident then he would have not spared even the life of his daughter-Kumari Sindhu. But due to grace of god, the daughter did not believed the words of the accused and returned to the village and thereby escaped. Otherwise, the duaghter might have also not presente before Court to give evidence.

S.C. No.914/2015 Otherwise, the evidence given by IO/PW15 and pancha PW1.4 proved the conducting of panchanama as per EXP13 and seizure of Mos 9 to 11 i.e., clothes of accused in the presence of panchas. Further, after completing the conducting of mahazar as per EXP13, the said IO has conducted further investigation as per the instructions of PI/PW17/CW26-Mr.Parashuramappa. So, on 27.03.2015 at 9 a.m, the said IO has visited mortuary of the Hospital and issued notice to PW1-Mr.Shivakumar, PW4- Smt.Keertikumari and CW3-Mr.Siddaraju and after taking their consent, the said IO has conducted inquest mahazar on the dead body of the deceased-Smt.Suguna between 9 a.m to 11 a.m as per EXP1. The conducting of inquest mahazar by the IO in the presence of panchas PW1 and PW4 is not doubt full and same is already discussed supra. The said IO has recorded statements of the witnesses and taken out photos of the dead body in his mobile and thereafter sent the dead body for the purpose of Postmortem through CW23/police constable-

Mr.Nandish. He has identified the requisition and report, which are marked as EXP19 and P20. After completion of postmortem, he has handed over the dead body to her relatives i.e, brother and son of the deceased by name Mr.Lingaraju and Mr.Sagar and received acknowledgement. The said CW23/police constable- Mr.Nandish S.C. No.914/2015 after completion of postmortem has return to police station where his statement was also recorded.

22.Further he has recorded the voluntary statement of the accused. In the said voluntary statement, the accused has stated before the IO as "

□

"

The said portion of the statement has been marked as EXP22. On the basis of the voluntary statement of the accused, the IO/PW15 reached the place of incident along with the accused. At spot, the IO has secured panchas CW17/PW2-Mr.Somashekhar and CW18-Mr.Nagesh. The prosecution has examined pancha-Mr.Somashekhar as PW2 and gave up the evidence of another pancha CW18-Mr.Nagesh in view of evidence of Mr.Somashekhar. The IO has categorically deposed about conducting of panchanama between 12.45 noon to 2 p.m in the presence of panchas. At that time the accused has produced wooden , knife and used for the commission of the offence against his wife. The IO has noticed presence of bloodstains on those Mos. The IO has seized the said Mos in the presence of panchas and he has also S.C. No.914/2015 collected bloodstain present on floor and sealed those seized Mos in separate cloth covers with initial SPS. The said mahazar has been marked at EXP2. He has also identified Mos seized under panchanama Ex.P.2 marked at Mo 1 to 4. He has brought the said Mos.1 to 4 into PF vide PF No.61/2015 dated 27.03.2015, which is marked at EXP13. Now the question is whether the evidence given by the pancha PW2 is corroborates with the evidence of IO or whether IO has carried out mahazar as per EXP2 in the presence of pancha?. On perusal of the evidence of pancha PW2- Mr.Somashekhar reveals that on next date of the incident i.e., on 27.03.2015 police had came to the place of incident along with the accused. At that time he and Mr.Nagesh were at the spot. The accused has produced , and knife from kitchen. They noticed presence of blood stains upon those Mos. They have also noticed presence of blood on the floor of the hall. The IO has collected the said bloodstain portion of cement floor () in a plastic box and seized. The said witness has identified the said Mos marked at Mos 1 to 4. During the course of cross- examination he has admitted like Mos 1 and 2, generally available in all most all residential house. The accused counsel has questioned about the length and width of the room, kitchen, hall, toilet etc. Instead of posing question about the preparing of mahazar at spot. The cross-examination of accused counsel S.C. No.914/2015 clearly shows that the accused was very well present and at the instance of accused panchanama was conducted in the presence of panchas and seized MO1 to MO4, because at para No.2 of cross-examination of PW2 last line reads as "

". The learned accused counsel tried to bring answer as he is a police pancha. The said witness has denied the question of the accused counsel. Except that learned accused counsel did not disputed the method or procedure of conducting mahazar. So, producing of Mos by the accused in the presence of IO and panchas and seizure of the said Mos is proved by the prosecution. Hence, the conducting of mahazar as per EXP2 by the IO in the presence of panchas and discovery of incriminating material i.e., Mos 1 to 4 at the instance of accused is not

doubtful. So, the evidence of PW.2 and I.O., placed on record by the prosecution corroborate with each other in proving recitals of panchanama marked at Ex.P.2. Even otherwise, the entire evidence of I.O., is remained as unchallenged. Such being the case, this Court relied upon the decisions of Hon'ble Supreme Court reported in 2002 SCC 1024 (B) regarding seizure mahazar. The Hon'ble Apex Court has held that:-

"Sec.27 of Evidence Act - Evidence of P.O. effecting recovery- Held could not stand vitiated by reason of S.C. No.914/2015 pancha instead of supporting the evidence has turned hostile".

And in 2002 SCC P.217 (Vol.1). The Hon'ble Apex Court has held that:-

"(B) U/s.27 Evidence Act - Recovery of articles at the instance of accused from a place open and accessible to others - Merely because the articles were recovered from open and accessible place evidence that regard would not become unreliable when those articles were concealed by the accused."

23. The further evidence of said IO-Mr.Manjunath shows that after completing of seizure of material objects on the basis of the voluntary statement of the accused, he has produced the accused along with police and remand application before the court for judicial custody. On same day he has recorded the statement of PW9-Smt.Roopaa Nagesh who is the owner of the house. He has also collected the lease agreement as per EXP5 from the said witnesses PW9. The evidence of PW9 is already discussed by this court and the said evidence of the owner of the house Smt.Roopaa Nagesh is also not surrounded with any doubt. Ultimately, the prosecution has proved the accused was residing along with his family members in the rental house bearing No.4 S.C. No.914/2015 situated at Vaddara palya, 8 th phase, JP Nagar, where the incident was occurred. On 28.03.2015 as already discussed, the IO has submitted requisition to the court to record the statement of complainant u/s.164 of Cr.P.C., The complainant has given statement before Magistrate as provided U/s.164 of Cr.P.C., The complainant being the eyewitness to the incident has given statement, which runs on par with his evidence. The said statement has been marked at EXP24 which is corroborates with the evidence given by Mr.Sagar i.e complainant. I.O., i.e., PSI has also recorded the statements of the witnesses PW7-Mr.Satish, CW8-Mr.Supreetkumar, PW8-Smt.Shantamma, CW11- Mr.Shivakumar and CW12-Mr.Siddaraju. On 30.03.2015 he received the postmortem report marked at EXP25. The witness CW23-Mr.Nandish, Police Constable has produced viscera of the deceased and submitted report to the IO. The said viscera has been brought into PF 92/2015 as per EXP27, and the report of the said police constable has been marked at EXP26. The said police constable has also produced the clothes of the deceased given by the Doctor which were collected by the Doctor while conducting postmortem on the dead body of the deceased. The said clothes were brought into PF No.93/2015 as per Ex.P29 and the report of the said police constable has been marked at Ex.P28. The said cloths have been identified by the IO marked at S.C. No.914/2015 Mos 5 to 8 i.e., Saree, petticoat, blouse and inner wear. He has sent the said Mos 1 to 11 to the FSL, Bangalore on 25.05.2015 through CW24-Police Head Constable-Mr.Rajkumar. The said police Head constable CW24-Rajkumar has produced the said Mos 1 to 11 to the FSL and produced endorsement and passport given to him. Those documents, passport and endorsement have been marked at EXP 30 to P32 respectively. The

IO has recorded statement of CW.24 i.e., police official. Thereafter he has handed over the further investigation to CW26-PI- Mr.Parashuramappa. The prosecution has also got marked FIR through the said witness at EXP33 and deceased photos taken at the time of inquest mahazar as EX.P7 to EX.P11. The entire evidence given by the IO PW.15 remained un-challenged and un-disputed, since, the learned advocate for accused has not cross-examined the IO.

24. It is necessary to note that the witness PW16-Mr.Nandish has also assisted the IO PW.15 in shifting the dead body after completion inquest mahazar for the purpose of postmortem, After postmortem the dead body was handed over to the brother and son of the deceased Mr.Lingaraju and Mr.Sagar respectively. He has also brought the viscera and cloths of the deceased on 13.05.2015 and produced before the IO-PW.15 and submitted S.C. No.914/2015 reports. The said witness evidence is also not disputed by way of the cross-examination by the accused counsel. So, the evidence given by the witnesses PW.15 and PW.16 as remained as un-challenged and un-disputed. The witnesses PW.17- Parashuramappa-PI has verified the investigation carried out by the witness PW.15 and submitted charge sheet.

25. It is pertinent to note from the above discussions it is very clear that the evidence given by the eye witness, hearsay witnesses and panchas corroborates with the evidence of IO- PW.15. There is no any doubts surrounded with the evidence of the independent witnesses and the IO to disbelieve the case of the prosecution. The inquest witnesses and the eye witnesses have also given evidence about the sustaining of injuries by the deceased due to the assault by the accused with an intention to kill the deceased. The said witnesses evidence regarding sustaining of the injuries by the deceased matches with the evidence of the medical officer, who has conducted postmortem and examined as PW.10-Mr.Ramesh. At this stage it is necessary to note the evidence of PW.10-Dr.C.Ramesh that on 27.03.2015 he received requisition from PSI of Subramanyapura Police station to conduct postmortem of deceased-Smt.Suguna and S.C. No.914/2015 accordingly he conducted postmortem on the same day from 1.45 noon to 2.45p.m. The report is as follows:

Dead body of a female, aged about 40 years, measuring 165 cms in length, moderately built and nourished, brown in complexion. Rigor mortis present all over the body. Faint Postmortem staining present over back.

External Injuries:

1. Lacerated wound measuring 9x3 cms present over the left cheek, 3cms below the left angle of mouth extending laterally towards the left angle of the mandible.
2. Lacerated wound measuring 5x1cmsxmuscled deep exposing underlying structures, 1cm below injury No.1.
3. Punctured wound measuring 0.5x0.5 cms present over left side of the chest over the breast.
4. Punctured wound measuring 0.5x0.5 cms present left shoulder.

5. Stab wound measuring 1x0.5cms present over lateral side of left breast.
6. Four punctured wounds measuring 0.5x0.5cms each present below the left breast.
7. Punctured wound measuring 1x1 cms present over left flank of abdomen.
8. Two punctured wounds measuring 1x1 cms present over the left flank of abdomen.
9. Three punctured wounds measuring 0.5x0.5 cms each present over left arm.
10. Three punctured wounds each measuring 1x0.5cms present over left thigh(just below the left liac crest) S.C. No.914/2015
11. Punctured wound measuring 1x0.5cms present over medial side of left thigh.
12. Scratched abrasion measuring 3x0.5 cms present over left hypo-chondrial region.
13. Laceration measuring 2x1 cms present over lateral aspect of left elbow.
14. Laceration measuring 3x1 cms present over lateral side of left forearm.
15. Laceration measuring 4x1 cms present over middle 1/3rd of left forearm.
16. Lacerated wound measuring 4x1 cms x tendon deep present over anterior surface of left wrist.
17. Lacerated wound measuring 3x1 cms present over lateral side of left forearm.
18. Lacerated wound (defense wound) measuring 2x1 cms present over posterior surface of right hand thumb.
19. Lacerated wound measuring 4x0.5cms present over posterior surface of right hand wrist.
20. Lacerated wound measuring 2x1cms present over anterior surface of right hand wrist.

Internal Injuries:

Scalp:

1. Laceration measuring 6x1cmsxbone deep present over frontal region in the middle extending backwards/

2. Two Lacerations measuring 0.5x.05cms each present over left parietal region.

3. Three Lacerations measuring 3x1cmsxbone deep, 1cm apart present over left occipital region. Brain and Skull - Intact.

S.C. No.914/2015 Thorax:

1. Contusion of muscles present below left breast, Pleura cavity contains blood and blood clots-800 ml, Larynx and Trachea-

Intact, Lungs - Right lung-Intact, Left lung-laceration measuring 2x1 cms present, Corresponding to injury No.5 c/s exudes minimal dark coloured fluid blood, Heart intact and pale.

Abdomen:

1. Walls intact, peritoneum intact, mouth pharynx and Oesophagus intact, stomach contains coffee coloured fluid with rice meal-3/4 stomach. Smell and mucosa normal, intestine contains gas and its contents, Liver and Spleen-Intact and pale.

Genito Urinary System:

1. Right kidney-intact, left kidney-contused, empty bladder, genital organs-intact Uterus-Normal.

In the end PW10-Dr.C.Ramesh given opinion as to cause of death is as " I am of the opinion that DEATH is due to SHOCK AND HAEMORRHAGE as result of MULTIPLE INJURIES sustained". So the evidence given by PW10-Dr.C.Ramesh is corroborates with the evidence of the independent witnesses. All the injuries present on the deceased clearly goes to show that the motive of the accused is to kill his wife by suspecting her fidelity. The accused not only harassed the deceased and his children but also taken away the life of the deceased though he has no right to do it.

S.C. No.914/2015

26. It is obvious to note about the evidence of PW18-Smt.Savitha and PW19-Smt.Shahanaz Fhatima who are the FSL Officers. The evidence of said FSL Officers shows that both PW18 and PW19 have conducted examination of Mo1 to 11 as per the procedure and submitted report as per EXP34 to EXP36. The learned accused counsel has not cross-examined the witness PW18. This shows the procedure adopted by the said witness PW18 in examining the viscera of the deceased-Suguna is proper. According to the said witness no content of poison present in the viscera of the deceased. Whereas the evidence of PW19- Smt.Shahanaz Fhatima discloses that, she has noticed bloodstains present on the articles shirt, pant, baniyan , knife, metal items(rod) and on the cloths, which were worn by deceased at the time of incident. According to the said witness, the bloodstains is human blood. The learned accused counsel though cross-examined the said witness has not brought out any evidence to disbelieve the conducting of examination of articles Mos1 to 11 by PW.19. Except denial

nothing is brought out from the witness PW.19. The evidence given by the witnesses PW18 and 19 discloses and also corroborates with the evidence of IO and complainant because according to the say of complainant, pancha witnesses there was bloodstains on the cloths of the accused and deceased and also on the weapons used for S.C. No.914/2015 commission of the offense. The evidence of FSL Officers shows that the deceased succumbed to death due to assault as described in the postmortem report. In view, of the above discussions, it is very clear that the deceased has sustained injuries as mentioned in the evidence of Doctor proves that the said injuries were sustained due to assault by the accused. Even the evidence of the Dr.Ramesh remained as un-challenged and un-disputed. The learned accused counsel has not cross- examined PW9-Roopa Nagesh, owner of the house, PW10-Doctor who has conducted postmortem, PW13-Mr.Chikkathimaiah, police official witness, PW15/IO-Manjunath, PW16-Mr.Nandish, police official witness, PW18-Smt.Savitha, FSL Officer. So, the failure to question witness on any aspect of him/her deposition amounts to admission of those facts. As already discussed above, the evidence of the independent witnesses corroborates with the evidence of investigation officer and other official witnesses in establishing guilt against the accused.

27. At this stage this court relied upon the decisions of Hon'ble Supreme Court reported in 2007(6) Kar.L.J.1(SC) (Swamy Sharaddananda @ Murali Manohar Mishra Vs., State of Karnataka). The Hon'ble Apex has held as under :

S.C. No.914/2015 "If it is proved that the deceased died in an unnatural circumstances in her bedroom which was occupied only by her and her husband, law requires the husband to offer an explanation in this behalf. We, however, do not intend to lay down a general law in this behalf as much would depend upon the facts and circumstances of each case. Absence of any explanation by the husband would lead to an inference which would lead to a circumstances against the accused.

Once the prosecution has been able to show that at the relevant time, the room is in exclusive occupation of the couple, the burden of proof lay upon the respondent to show under what circumstances death was caused to his wife. The onus was on him.

INDIAN EVIDENCE ACT,1872 Section 106-Burden of proving fact, especially within knowledge- Incident of crime taking place within four walls of the house-Matrimonial strifes - when offence has been committed by the husband-accused within the four walls, the nature and the amount of evidence required to establish the charge - Cannot be of same degree as required in other cases of circumstantial evidence - 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. (para 25).

S.C. No.914/2015 In the present case on hand, at the time of recording of accused statement, the accused except denial has not answered or given any explanation in that behalf, since the accused and his wife were only present in the home at the time of incident.

At this stage this court has also relied upon the decisions of Hon'ble Supreme Court reported in 2002 SCC P 1600 Vol.2. The Hon'ble Apex Court has held that:-

(B) Related witness - Testimony of an eye witness cannot be thrown away merely on the ground that he is the close relative of the victim.

More so when they were quite natural witnesses and their evidence was supported by medical evidence as well as objective finding of I.O.,"

And in Appeal (Crl.) No.1341/2005 in Trimuk Maroti Kirkan Vs., State of Maharashtra the Hon'ble Apex has held as under :

"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 Sec.106 of the Evidence Act there will be a S.C. No.914/2015 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 entire upon the prosecution and there is no duty at all on an accused to offer any explanation.

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 like 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.

If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody.

S.C. No.914/2015 It was further observed that even though Section 106 of Evidence Act may not be 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 like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the court to draw difference inference.

The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

It has been consistently held that if the accused 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.

In 2018(2) Kar.L.J. 116(DB) (Babu V.State of Karanataka), the Hon'ble High Court of Karnataka has held that:-

(C)Indian Evidence Act, 1872, Section 106 - Burden of proving fact, especially S.C. No.914/2015 within knowledge - Incident of Crime taking place within four wall so of the house - Matrimonial strifes - When offence has been committed by the husband-accused within the four walls, the nature and amount of evidence required to establish the charge - Cannot be of same degree as required in other cases of circumstantial evidence - 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.

In Ganesh Vs., State of Maharashtra(1992) 3 SCC 106-"the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Sec.313 Cr.P.C., The mere denial of the prosecution case coupled with absence of any explanation where held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife".

In view of the discussions and decision of the Hon'ble Supreme Court and Hon'ble High Court of Karnataka, the S.C. No.914/2015 prosecution succeeded to prove the guilt against the accused for the offences punishable U/s.498A and 302 of IPC beyond doubt. As such this Court has answered points No. 1 and 2 in the Affirmative.

28. Point No.3: In view of answer of court on points No.1 and 2, pass the following:

ORDER Acting U/s.235(2) of Cr.P.C., the accused is found guilty of the offences punishable U/s.498A and 302 of IPC.

(Dictated to the Stenographer, transcript corrected by me and then pronounced in open Court on this the 25th day of February, 2020) (E. RAJEEVA GOWDA) XLV Addl. City Civil & Sessions Judge, Bengaluru.

S.C. No.914/2015 ORDER ON QUANTUM OF SENTENCE The learned Public Prosecutor has argued that the accused has murdered his own wife and the same is monstrous, heinous and in

human in act and comes within the purview of rarest of rare case. The punishment which is going to be passed should be a message to the society. Accordingly, the learned public prosecutor has sought to award with substantive period of sentence to the accused.

The learned counsel for the accused has argued that the accused is not having any criminal antecedents and he is suffering from diabetes. Accordingly, prayed to pass minimum sentence. Even the accused has submitted that he is suffering from diabetes and taking treatment continuously. Hence, prayed to show leniency.

In view of the arguments on both sides, this Court has relied upon the decisions of Hon'ble Supreme Court of India reported in AIR 1991 SC 1463 between Sevaka Perumal etc., Vs. State of Tamil Nadu with regard to imposing of sentence.

The Hon'ble Apex Court has held that:-

"Undue sympathy to impose inadequate

S.C. No.914/2015

sentence would do harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threat. It is the duty of the every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.,"

At this stage, it is necessary to rely upon the decision of Hon'ble Supreme Court reported in 2007(6) Kar.L.J.1(SC) (Swamy Sharaddananda @ Murali Manohar Mishra Vs., State of Karnataka) with regard to imposing of sentence. The Hon'ble Apex has held as under :

56.Criminal Justice Act, 1991 of England famously hailed doctrine of proportionality as the guiding principle. But since the 1991 legislation of sentencing has seen much reform and Criminal Justice Act of 2003 presents a fresh set of sentencing objectives. Sec.142 of the Act delineates the following as the purpose of sentencing:

"142.Purpose of sentencing:- (1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing:-

(a)the punishment of offenders;

(b)the reduction of crime(including its reduction by deterrence);

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(c)the reform and rehabilitation of offenders;

(d)the protector of the public; and

(e) the making of reparation by offenders to persons affected by their offences."

It is settled principle of law that measure of punishment in a given case must depend upon atrocity of the crime, conduct of the accused/criminal and the defenseless and unprotected stage of the victim. Imposing of appropriate punishment is the manner in which Court responds to the society's cry of justice against the criminals. Justice demands that Courts should impose punishment befitting the crime so that which should reflect public adherence of the crime.

In the present case on hand, the evidence on record discloses that accused who is none other than the husband of the deceased has attacked with , and knife and caused grievous injuries on her body. Before killing, he has been harassing his deceased wife and his family members physically and mentally. This Case not comes within the ambit of rarest of rare case as held by by Hon'ble Supreme Court. So after considering the atrocity of S.C. No.914/2015 the crime, conduct of the accused and defenseless or unprotected position of the deceased and also the loss of mother love by the daughter i.e., Pw.1, this Court is of the opinion that accused is not entitled for any leniency and he should be punished with imprisonment for life with fine, since he has killed his wife barbarously and this kind of criminals are always fatal to the society.

Hence, this Court proceed to pass the following:-

ORDER The accused is sentenced to undergo Imprisonment for life and ordered to pay a fine amount of Rs.30,000/- for the offence punishable U/s.302 of IPC. In default of payment of fine amount, accused is further ordered to undergo Rigorous Imprisonment for a period of six months .

Further the accused is sentenced to undergo Simple Imprisonment for one year and ordered to pay a fine amount of Rs.10,000/- for the offence punishable U/s.498A of IPC. In default of payment of fine amount, accused is further ordered to undergo Simple Imprisonment for a period of three months.

Both the sentences shall run concurrently.

S.C. No.914/2015 MOs1 and 5 to 11 since worthless are ordered to be destroyed after appeal period is over.

Mos.2 to 4 shall be confiscate to the State after expiry of appeal period.

If the fine amount is realized, Rs.20,000/- is ordered to be confiscate to the State and the balance amount of Rs.10,000/- each is ordered to be paid to PW.3-Mr.Sagar and PW.12-Kum.Sindhu i.e., son and daughter of deceased-Smt.Suguna as compensation U/s.357 of Cr.P.C., Office is directed to send the copy of the judgment to the Member Secretary, District Legal Service Authority, Bangalore Urban District as provided

U/s.357A(2) of Cr.P.C., to award compensation in favour of son and daughter of deceased-Smt.Suguna i.e., PW.3- Mr.Sagar and PW.12-Kum.Sindhu under the victim compensation scheme. Further the son and daughter of the deceased should approach Member Secretary, District Legal Service Authority, Bangalore Urban District, immediately and furnish their particulars to proceed under victim compensation scheme as provided under Victim Compensation scheme by the District Legal Service Authority, Bangalore Urban S.C. No.914/2015 District.

Acting U/s.428 of Cr.P.C., the accused has been given set off of Judicial custody period, which he has undergone.

Issue Conviction Warrant accordingly to the concerned Jail Authority.

Free copy of the judgment be supplied to the accused.

(Dictated to the Stenographer, transcript corrected by me and then pronounced in open Court on this the 25 th day of February, 2020) (E. RAJEEVA GOWDA) XLV Addl. City Civil & Sessions Judge, Bengaluru S.C. No.914/2015 ANNEXURE List of Witnesses examined on behalf of Prosecution:

P.W.1:	Shivakumar
P.W.2:	Somashekar
P.W.3:	B. K. Sagar
P.W.4:	Keerthikumari
P.W.5:	Prakash
P.W.6:	Lingaraju
P.W.7:	Satish
P.W.8:	Shanthamma
P.W.9:	Smt. Roopa Nagesh
P.W.10:	Dr.C. Ramesh
P.W.11:	Chidananda Murthy
P.W.12:	Kumari Sindhu
P.W.13:	Chikkathimmaiah
P.W.14:	Prabhakar
P.W.15:	Manjunatha.S
P.W.16:	Nandish
P.W.17:	Parashuramappa.H
P.W.18:	Savitha
P.W.19:	Sahana Fathima.

List of Documents exhibited on behalf of Prosecution:

Ex.P.1: Inquest Mahazar Ex.P.2: Seizure Mahazar Ex.P.3: Complaint Ex.P.4: Statement U/s.164 of Cr.P.c., Ex.P.5: Rental Agreement Ex.P.6: Statement of PW.13 S.C. No.914/2015 Ex.P.7 to Ex.P.12: Photographs Ex.P.13: Spot Mahazar Ex.P.14: Police Intimation dated 26.03.2015 Ex.P.15: Police Intimation dated 26.03.2015

Ex.P.16: Discharge Summary(NIMHANS) Ex.P.17: PF No.60/2015 Ex.P.18: Notice
Ex.P.19: Death Memo Ex.P.20: Death Examination Report Ex.P.21: Dead body
received letter Ex.P.22: Vol., statement of accused Ex.P.23: PF No.61/2015 Ex.P.24:
Statement of Sagar U/s.164 Cr.P.C., Ex.P.25: Postmortem Report Ex.P.26: Statement
of PC 5790 Ex.P.27: PF No.92/2015 Ex.P.28: Statement of PC 5790 Ex.P.29: PF
No.93/2015 Ex.P.30: FSL Acknowledgement Ex.P.31: FSL Acknowledgement
Ex.P.32: Passport Ex.P.33: FIR Ex.P.34: FSL Report Ex.P.35: FSL Materials
examined Ex.P.36: Sample Seal.

List of Witnesses examined on behalf of Accused:

NIL List of Documents exhibited on behalf of Accused:-

NIL S.C. No.914/2015 List of Material Objects marked on behalf of Prosecution:-
M.O.1 : , M.O.2 : M.O.3 : Knife M.O.4 : Plastic Box M.O.5 :
Saree M.O.6 : Petty coat M.O.7 : Blouse M.O.8 : M.O.9 : Pant M.O.10: Shirt
M.O.11: Banian (E. RAJEEVA GOWDA) XLV Addl. City Civil & Sessions Judge,
Bengaluru S.C. No.914/2015 25.02.2020 State by PP Accused is in J.C./HKG., for
judgment.

Accused is produced before Court through PC No.16393 and HC No.8929 of Konanakunte P.S.,
Adv., for accused Sri HKG and Learned PP are present.

Order pronounced in the open Court vide its separate order ORDER Acting U/s.235(2) of Cr.P.C.,
the accused is found guilty of the offences punishable U/s.498A and 302 of IPC.

(E. RAJEEVA GOWDA) XLV Addl. City Civil & Sessions Judge, Bengaluru 58 S.C. No.914/2015 S.C.
No.914/2015 ORDER The accused is sentenced to undergo Imprisonment for life and ordered to pay
a fine amount of Rs.30,000/- for the offence punishable U/s.302 of IPC. In default of payment of
fine amount, accused is further ordered to undergo Rigorous Imprisonment for a period of six
months.

Further the accused is sentenced to undergo Simple Imprisonment for one year and ordered to pay a
fine amount of Rs.10,000/- for the offence punishable U/s.498A of IPC. In default of payment of
fine amount, accused is further ordered to undergo Simple Imprisonment for a period of three
months.

Both the sentences shall run concurrently. MOs1 and 5 to 11 since worthless are ordered to be
destroyed after appeal period is over.

Mos.2 to 4 shall be confiscate to the State after expiry of appeal period.

If the fine amount is realized, Rs.20,000/- is ordered to be confiscate to the State and the balance
amount of Rs.10,000/- each is ordered to be paid to PW.3-Mr.Sagar and PW.12-Kum.Sindhu i.e.,

son and daughter of deceased- Smt.Suguna as compensation U/s.357 of Cr.P.C., Office is directed to send the copy of the judgment to the Member Secretary, District Legal Service Authority, Bangalore Urban District as provided U/s.357A(2) of Cr.P.C., to award compensation in favour of son and daughter of deceased-Smt.Suguna i.e., PW.3-Mr.Sagar and PW.12- Kum.Sindhu under the victim compensation scheme. Further the son and daughter of the deceased should approach Member Secretary, District Legal Service Authority, Bangalore Urban District, immediately and furnish their particulars to proceed under victim compensation scheme as provided under Victim Compensation scheme by the District Legal Service Authority, Bangalore Urban District. Acting U/s.428 of Cr.P.C., the accused has been given set off of Judicial custody period, which he has undergone.

S.C. No.914/2015 Issue Conviction Warrant accordingly to the concerned Jail Authority.

Free copy of the judgment be supplied to the accused.

(E. RAJEEVA GOWDA) XLV Addl. City Civil & Sessions Judge, Bengaluru